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NAVAL COURTS AND BOARDS



1937

REPRINTED 1945, INCLUDING
CHANGES NO. 1 AND NO. 2



WITH TABLE OF
CORRESPONDING SECTIONS
1937 AND 1923

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1945

NAVAL CODE

ARTICLE

100



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INTRODUCTION

This book is a revision of the 1923 edition. There are a number of changes in the arrangement of chapters, in the consolidation of similar subjects, and in the elimination of unnecessary matter.

The purpose has been to present the subject in a logical and practical order. Chapters I to VIII deal with naval criminal law and court procedure; chapters IX and X deal with the law of misconduct, courts of inquiry and investigations, all being closely related; chapters XI to XIV contain the instruction and procedure for boards of medical examiners, naval examining boards, and naval retiring boards; the appendices deal with matters less frequently used.

Naval Academy courts-martial are not presented for the reason that they are of little general interest and use to the service at large.

Many footnotes of the older edition have been eliminated by including their substance in the text. Numerous references to other sections of the book have been eliminated.

Where examples are given it must be understood that they are not exhaustive and do not cover all cases. They are given where it is thought they will be of assistance, merely as illustrations and as a guide to the solution of similar problems.

Acknowledgment is made to those officers who have suggested changes in the 1923 edition. Since it is through constructive criticism that improvements may be made, further suggestions from the service are invited.

G. J. ROWCLIFF,
Judge Advocate General of the Navy.

DEPARTMENT OF THE NAVY,
Washington, D. C., March 4, 1937.

Naval Courts and Boards, 1937, is issued for the government of all persons attached to the naval service. It is hereby required and directed that all officers and other persons belonging to the Navy, so far as the duties of each are concerned, make themselves acquainted with, observe, and comply with the provisions contained herein.

This book will supersede Naval Courts and Boards, 1923, on July 1, 1937, except that any case that may be adjourned to that or a later day will be completed without change of procedure.

CLAUDE A. SWANSON,
Secretary of the Navy.

THE WHITE HOUSE,
March 5, 1937.

Approved:

FRANKLIN D. ROOSEVELT,
President of the United States.

(VI)

CHAPTER I

NAVAL LAW

1. **Definition of naval law.**—Naval law may be defined as the body of rules prescribed by competent authority for the government and regulation of the naval forces.

2. **Sources of naval law.**—There are two general sources of naval law, namely, written and unwritten.

3. **Sources of written naval law.**—The sources of written naval law are:

(a) The Constitution of the United States.

Article I, section 8, clause 14, of the Constitution gives Congress the power "to make rules for the government and regulation of the land and naval forces."

(b) Statutory enactments of Congress made in accordance with the foregoing power.

The most important of these are to be found in the articles for the government of the Navy and subsequent enactments properly additional thereto. However, there are many important statutory provisions respecting the administration of the Navy which are not embraced in these articles but are to be found in the Revised Statutes and in the volumes of the Statutes at Large, the former being a codification of the laws of the United States which were in existence prior to December 1, 1873, and the latter containing statutes subsequently enacted. The code of the laws of the United States (U. S. Code) contains a codification of all the general and permanent laws of the United States in force on January 3, 1935. The statutes relating to the Navy are collected in a departmental publication entitled "Laws Relating to the Navy, Annotated", and 1929 supplement thereto.

(c) The Navy regulations.

(d) Orders and instructions.

These are additional to the Navy regulations and are issued by the Secretary of the Navy for the information and guidance of persons in the Naval Establishment. Among these are general orders, uniform regulations, signal and drill books, manuals of the separate bureaus of the Navy Department, and other similar publications.

4. **Knowledge of naval law required.**—Each officer and enlisted man is presumed to have knowledge of the contents of Navy regulations and general orders; and although ignorance of them may be considered as an extenuating circumstance, it does not excuse one guilty of an infraction thereof nor relieve him from the consequences of his acts.

5. **Sources of unwritten naval law.**—The sources of unwritten naval law are:

(a) Decisions of the courts.

The Constitution provides for a judicial branch of our Government for the purpose of interpreting the laws. This function is exercised by means of the Federal courts before which doubtful questions of law arising under the Federal Government are brought for decision. Of these the Supreme Court ranks first in point of authority, but the decision of an inferior Federal court, while not equal in weight to that of the Supreme Court, is none the less authoritative in the absence of a reversal by a superior tribunal. Accordingly, when a law relating to the Navy has been authoritatively interpreted by the proper courts, such interpretation becomes in effect a part of the law as fully as though it had been specifically written therein by Congress. Decisions of State courts also frequently relate to the interpretation of laws affecting the Navy, but such decisions are not controlling on the Federal Government but are merely instructive.

(b) Decisions of the President and the Secretary of the Navy and the opinions of the Attorney General and the Judge Advocate General of the Navy.

Closely related to the decisions of courts in point of authority are the decisions of the President and the Secretary of the Navy. Under this classification fall also the opinions of the Attorney General, the chief legal adviser of the executive branch of the Government, and of the Judge Advocate General of the Navy. While the Navy Department is bound by interpretations placed on statutes by the Federal courts, this limitation does not restrict the department in making authoritative decisions on matters coming within its jurisdiction and not governed by statute. No statute lays down the rules of evidence to govern naval courts-martial and the decisions of the department on such a question are the highest authority for a naval court-martial to follow.

(c) Court-martial orders.

The Navy Regulations (1) provide that court-martial orders "shall have full force and effect for the guidance of all persons in the Naval Establishment", and officers of the naval service are responsible

(1) Art. 74 (4).

for the observance of instructions contained therein, just as they are for the observance of other lawful regulations.

(d) Customs and usages of the service.

Circumstances from time to time arise for the government of which there are no written rules to be found. In such cases customs of the service govern. Customs of the service may be likened, in their origin and development, to the portions of the common law of England similarly established. But custom is not to be confused with usage; the former has the force of law, the latter is merely a fact. There may be usage without custom, but there can be no custom unless accompanied by usage. Usage consists merely of the repetition of acts, while custom is created out of their repetition.

Custom.—The following are the principal conditions to be fulfilled in order to constitute a valid custom:

- (1) It must be long continued.
- (2) It must be certain and uniform.
- (3) It must be compulsory.
- (4) It must be consistent.
- (5) It must be general.
- (6) It must be known.
- (7) It must not be in opposition to the terms and provisions of a statute or lawful regulation or order.

As usage constantly observed for a long period results in the establishment of a custom, so long-continued nonusage will operate to destroy a particular custom, that is, to deprive it of its obligatory character.

The field of operation of the unwritten naval law is extensive. It is applied in defining certain offenses against naval law and in determining whether certain acts or omissions are punishable as such, as in cases coming under article 22 of the articles for the government of the Navy. At times, also, custom is appealed to as a rule of interpretation of terms technical to the naval service.

Usage.—Mere practices or usages of service, although long-continued, are not customs and have none of the obligatory force which attaches to customary law. The fact that such usages exist, therefore, can never be pleaded in justification of conduct otherwise criminal or reprehensible, nor be relied upon as a complete defense in a trial by court-martial. With the permission of the court, however, they may be introduced in evidence, with a view to diminishing to some extent the degree of criminality involved in the offense charged.

6. Digest of decisions affecting naval law.—It naturally follows that in the application of naval law there arise from time to time ques-

tions which have to be decided by the Navy Department. The more important of such decisions are published in court-martial orders for the information of the naval service. In connection with these orders there is published annually an index of the orders of the year. Also, the Naval Digest, a departmental publication, contains a digest of court-martial orders and of the more important decisions and opinions affecting naval law. Thus it is possible for officers called upon to apply naval law readily to find the decisions of the department affecting the application of this law.

It occasionally becomes necessary to overrule or to restrict or enlarge the scope of prior court-martial orders. For this reason the latest court-martial order is generally the best authority and should be followed.

CHAPTER II

CHARGES AND SPECIFICATIONS

11. **Instructions.**—Where instructions regarding any point in connection with summary courts-martial or deck courts are not found in this book, then corresponding instructions for general courts-martial, where applicable, shall be followed.

12. **Definitions.**—A charge, in naval law, designates an offense in general terms. A specification sets forth the facts constituting the charge. It is requisite that a charge name an offense provided for by, or within the purview of, the articles for the government of the Navy or other enactment of Congress; and that a specification set forth in simple and concise language facts sufficient to constitute the particular offense charged and in such manner as to enable a person of common understanding to know what is intended. In summary court-martial or deck court procedure there is no charge, but the specification must, nevertheless, set forth facts sufficient to constitute the particular offense just as though it were laid under a charge.

13. **Powers of convening authority in framing charges.**—It is entirely within the discretion of the officer empowered to convene a court-martial to direct what portions of the complaint against an accused shall be charged against him. When the competent officer has decided to have a person tried by general court-martial he shall cause charges and specifications against the offender to be prepared, and transmit a true copy (1) of them, with an order for the arrest or confinement of the accused, to the proper officer, who shall deliver such order to the accused, together with the copy of the charges and specifications, at the same time formally notifying him that he is put under arrest. If at any time the original charges and specifications are withdrawn and new ones made out, then a copy of the latter should be delivered to the accused and he should be released from arrest for trial on the original charges and specifications and arrested for trial on the new ones.

(1) When charges and specifications are preferred against an officer by a convening authority other than the Secretary of the Navy, an extra copy shall be mailed to the Judge Advocate General at the same time that the originals are forwarded to the judge advocate.

14. Alterations in charges and specifications.—After the charges and specifications have been signed by the proper authority, and trial ordered, it is not competent for any person to make alterations therein without first having obtained the consent of such authority, *except* that the judge advocate may, with the approval of the court, correct manifest clerical errors. If the court-martial considers other alterations necessary in charges or specifications laid before it, they must be submitted to the convening authority for his approval.

15. Errors in charges and specifications.—Errors in charges and specifications are of three classes: (1) Clerical errors; (2) technical errors other than clerical; (3) errors of substance.

(1) Clerical errors are those of spelling, punctuation, etc., correction of which does not alter facts. Such errors may, with the approval of the court, be corrected by the judge advocate (or recorder or deck court officer). Under such circumstances the corrections shall be neatly made *in red ink* and initialed by the officer making them.

(2) Technical errors, also known as errors in form, are those which would be sufficient to sustain an objection by the accused, such as uncertainty as to the time or place of occurrence of the alleged offense, name of the accused misspelled, etc. If the court is in doubt as to whether an error in the charges and specifications is clerical or technical, it should treat it as a technical error and thus avoid any possibility of having the case disapproved on a technicality of this nature.

(3) Errors in substance are those of such a nature as to vitiate the entire proceedings and render them liable to review by civil tribunals; such, for example, as failure to show jurisdiction on the part of the court.

It is not within the discretion of the judge advocate, the court, or any other person to correct technical errors and errors in substance in the charges and specifications without the consent of the convening authority.

16. Amendment of defects in charges and specifications.—Should the convening authority authorize the judge advocate, recorder, or deck court officer to amend legal defects in the charges and specifications before the accused is called on to plead, it is to be understood that in so doing the judge advocate, recorder, or deck court officer is responsible that the amendments are made strictly in accordance with the instructions of the convening authority. He shall see that the accused's copy is corrected accordingly.

17. Trial in joinder.—Accused persons will not be joined in the same charge and specification unless for concert of action in an offense.

The mere fact that several persons happen to have committed the same offense at the same time does not authorize their being joined in the charge. Thus where two or more persons take occasion to desert or absent themselves without leave, in company but not in pursuance of a common unlawful design and concert, the case is not one of a single joint offense, but of several separate offenses of the same character, which are no less several in law though committed at the same moment. When the convening authority does not join the accused in the charges and specifications, but indicates that he desires them tried separately by preferring separate charges and specifications, courts-martial shall not try them in joinder. If the convening authority desires to try men in joinder, he should prefer but one set of charges and specifications, and write but one letter of transmittal.

18. Nolle prosequi—court not authorized to direct.—A *nolle prosequi* (or withdrawal or discontinuance) is an entry made on the record by which the prosecutor or plaintiff declares that he will proceed no further. After charges have been formally referred by competent authority to a court-martial for trial the court is not authorized, at its discretion and upon its own motion, to strike out a charge or specification, or to direct or permit the judge advocate to drop or withdraw such charge or specification, or to enter a *nolle prosequi* to it. For such action the authority of the convening officer is necessary, but such action is not equivalent to an acquittal or to a grant of pardon and can not be so pleaded.

19. Duplication of charges.—The law permits as many charges to be preferred as may be necessary to provide for every possible contingency in the evidence. Where the offense falls apparently equally within the scope of two or more articles of the articles for the government of the Navy, or where the legal character of the offense can not be precisely known or defined until developed by the proof, it is quite proper to specify the offense under two or more charges; but there is, of course, no reason for doing this if one charge is lesser than and included in the other. In such case the specification should be laid under the more serious charge.

20. Consolidation of charges.—All the charges against the accused should be consolidated into one set of charges, and one trial had upon the consolidated set instead of having two or more trials. Where there have been a number of offenses of a character usually tried by a summary court-martial or deck court which in the ag-

gregate, in the opinion of the convening authority, should be more severely punished than can be done by a summary court-martial, it is proper to order the offender tried on them by a general court-martial.

21. Same: Additional charges.—In case trial has been ordered but not commenced when knowledge of another offense is received, this latter should be sent to the court as an additional charge. Such new and separate charges may relate to offenses not known at the time the original charges were preferred or, as is more frequent, they may relate to offenses committed after the original charges were preferred. Charges of this character do not require a separate trial, but, subject to the usual procedure, may be tried with the original charges if submitted to the court before sentence is adjudged. Otherwise the convening authority, by ordering separate trials, multiplies the limit of punishment a summary court-martial or deck court is authorized to impose.

22. General and specific charges.—Scandalous conduct tending to the destruction of good morals, conduct to the prejudice of good order and discipline, and conduct unbecoming an officer and a gentleman constitute the general charges. All other charges are specific charges. Since most attempted (but not consummated) offenses have to be laid under a general charge (sec. 42), it follows that one of the general charges is a lesser included offense in most of the specific charges.

23. Different offenses the subject of distinct charge and specification.—Care should be exercised to insure that offenses of a different nature are not laid under the same charge. Different offenses, however, if of the same nature, should be included in separate specifications under the same charge.

24. Numbering charges and specifications.—Charges and specifications should be numbered consecutively, the former with roman numerals and the latter with arabic numerals. However, when there is only one charge it should not be numbered, nor should a specification be numbered if it is the only one under a charge. So far as practicable, charges and specifications should also be placed in chronological order.

25. Abbreviations authorized.—Dates and times may be expressed in figures. The following abbreviations are authorized: "U. S.", "U. S. S.", "a. m.", and "p. m." Christian names other than the first, or one commonly used, may be indicated by initial letters.

Sums of money mentioned in a specification should be set out in both words and figures, the latter in parentheses.

Except as indicated in this section, the use of figures or abbreviations in charges or specifications is prohibited.

26. Statement of offense—The charge.—If an offense is one specifically provided for, it should be preferred under a specific rather than a general charge. In order to determine this point the following sources should be consulted:

- (a) Sample charges and specifications.
- (b) Limitations of punishments.
- (c) Articles for the government of the Navy.

When an offense is not specially provided for in the above sources, it shall be preferred under one of the general charges, to wit, "scandalous conduct tending to the destruction of good morals", or "conduct to the prejudice of good order and discipline", or "conduct unbecoming an officer and a gentleman." In determining which of the general charges should be used, the following general rule should be observed: Acts are of a scandalous nature and, consequently, are properly so charged, that give offense to the conscience or moral feelings; call out condemnation; involve scandal or disgrace to reputation; bring shame or infamy; or because of their evil nature are *malum in se*.

27. Same: The specification.—A specification should contain allegations of all the essential elements of the offense in simple, accurate, and concise language. An essential element is one the omission of which in a specification would be ground for sustaining a timely objection on the part of the accused, or if not objected to and the evidence adduced does not supply the omission, will constitute a fatal defect. For example, a specification of theft should allege:

- (1) A taking and carrying away of the property in question, and manner thereof.
- (2) Description and value of the personal property.
- (3) From the actual or constructive possession of the owner or person entitled to possession as against the accused.
- (4) Place and time of taking.
- (5) Description of owner or person entitled to possession.
- (6) Intent to deprive the owner permanently of his property.

For the elements of any particular offense the applicable section under sample charges and specifications should be consulted.

It is not essential to state in a specification that an offense was committed in breach of any Federal statute, article of the articles for the government of the Navy, law of the State in which the court is sitting, or general regulation, as the court takes judicial notice of such statute, article, State law, or regulation, under which the charge is laid, but whenever the offense comes directly under any other enactment (foreign law, municipal ordinance, or local ship or sta-

tion order), the same should be set forth verbatim in the specification and proved like any other fact.

A specification must on its face allege facts which constitute a violation of some law, regulation, or custom of the service. It is not sufficient that the accused be charged generally with having committed an offense, but the particular acts or circumstances attending a specific offense must be distinctly set forth in the specification. Each specification must be complete and in itself state an offense, but should allege only one offense. It is not sufficient that several specifications taken together may do so.

It is not necessary that a specification be framed with the technical precision of a common law indictment, so long as it clearly shows jurisdiction in the court over the accused and over the offense with which he is charged, and the latter is sufficiently described to advise the accused of the time and place and circumstances under which it is claimed he committed the crime, to enable him to make any defense he may have. The statement of a mere conclusion of law instead of facts will not make a good specification. Thus, it would not be a good specification which merely stated that theft was committed by a certain man at a certain time and place, or that a man unlawfully had in his possession certain property without alleging facts showing wherein the possession was unlawful. Each specification must support the charge under which it is laid.

To constitute a crime both criminal intent and a prohibited act must concur. Where the offense specified is one which requires a specific intent and the act, both must be set out. For example, a specification alleging that the accused "did feloniously have in his possession with the intention of removing same from said ship" certain Government property, fails to state an offense. The criminal intent is properly alleged, but the word "feloniously" is a mere conclusion of law, and the only facts alleged are that the accused had Government property in his possession and had the intention of removing it from the ship. The mere possession of Government property is not in itself a violation of any law, regulation, or custom of the service, nor is it illegal in itself to take Government property from the ship.

28. Same: Intent should be expressed by technical word prescribed.—In cases where the law has adopted certain expressions to show the intent with which an offense is committed, the intent shall be expressed by the technical word prescribed, as "wilfully", "knowingly", "corruptly", "maliciously", "intentionally", "wrongfully." Certain of the foregoing words appear in the articles for the government of the Navy and should be used to express fully the offense

charged. For example, a charge made against an officer for making or for signing a false muster must be alleged as having been done "knowingly."

29. Alternative specifications.—A specification should not allege two or more offenses in the alternative or disjunctive. Even when a charge is predicated upon a statute, the words of which are in the alternative, then the alternative offenses thus provided for should, if it be desired to allege more than one offense, be set out in separate specifications. In general it may be said that the word "or" appearing in the part of the specification which states the offense is bad except where it is used in the sense of "to wit."

30. Evidence not to be stated.—In alleging an offense it is not technically good pleading to state the circumstances or evidence proving or tending to prove it, such as the acts, occurrences, and matters of description, which should properly form part of the testimony of witnesses; but there is no objection to stating very briefly in the specification the immediate result or effect of the act charged as a circumstance or description illustrating the character and extent of the offense committed. For instance, in charging striking another it is advisable, in a case where the blow was severe, to add in the specification the aggravated result of the blow or other injury inflicted. Unnecessarily "pleading the evidence" does not render the specification fatally defective. But the circumstances thus alleged in detail, even though unnecessarily, must be proved as alleged, or exceptions must be made in the finding. There is also danger of variance as to the details between the specification and the proof. Unnecessary allegations in a specification increase the burden placed on the prosecution and the chance of error in the trial.

31. Where higher criminality attaches to acts under particular circumstances.—Whenever the law attaches higher criminality to an act committed under particular circumstances the act must, to bring the person within the higher degree of punishment, be alleged with certainty and precision to have been committed under those circumstances. For instance, in a conviction for desertion the limitations of punishment permit of a higher degree of punishment "in case of apprehension and delivery to naval authorities" than "in case of surrender to naval authorities." If, therefore, it is desired to bring an offender within the higher degree, the apprehension and delivery to naval authorities must be alleged.

32. The facts must be stated with certainty.—It is not sufficient that the accused be charged generally with having committed an offense, as, for instance, habitual violation of orders or neglect of duty, or

attempt to commit an immoral act in and upon the body of one named, or act in a disorderly manner thereby reflecting discredit upon the uniform of the naval service, but the particular acts or circumstances attending a specific offense must be distinctly set forth in the specification. Where intent is an ingredient of the offense it must be set forth. All facts, circumstances, and intent must be set forth with certainty and precision and the accused charged directly and positively with having committed the offense.

33. Certainty as to the party accused.—The accused should be described by his rank or rating, Christian name and surname, written at full length, with the addition of his vessel or station at the time the offense with which he is charged took place. Christian names other than the one commonly used may be indicated by initial letters. An error in the name of the accused, if unobjected to, and *idem sonans* (having the same sound) with his true name, is not fatal. As the rate or rank is merely descriptive, an error therein, if not objected to, is not material. If the accused is known by more than one name, as frequently happens in cases of fraudulent enlistment, the specification should describe him by the name he admits to be his true name. If there be no such admission his true name will be assumed as that first appearing in his official record. He will also be described under his assumed name or names as an alias or aliases.

34. Certainty as to the person against whom the offense was committed.—In the case of offenses against the person or property of individuals, the Christian name and surname, with the rank and station or duty of such person, if he have any, must be stated, if known. If not known, the party injured must be described as a person “by name to the relator unknown.”

35. Allegations as to time and place.—The time and place of the commission of the offense charged must be averred in the specification. They must be stated with sufficient precision clearly to identify the offense and enable the accused to understand what particular act or omission he is called upon to defend. It is proper pleading to allege in a specification that a certain offense occurred “on or about” a certain day “at or near” a certain place, or, if necessary to be more explicit as to the time, “at or about” a certain hour. These phrases have no precise meaning, but are to be construed reasonably in the light of the circumstances of each particular case. There are cases where precision as to time or place is essential and these are covered in the sample charges and specifications. Where the act or acts specified extend over a considerable period of time it is proper to allege them as having occurred, for example, “during the

period from October 1, 19—, to March 4, 19—.” So, also, it is proper to allege that an offense was committed while “en route” between certain points.

36. Written instruments.—Written instruments, or such portions thereof as form part of the gist of the offense charged, must be set out verbatim. A written instrument may be set out in substance when it is not part of the gist of the offense or if it has been lost or destroyed or is in the hands of the accused. When set out verbatim it should be introduced by the words “in tenor as follows”; when set out in substance, by the words “in substance as follows.”

37. Oral statements.—Oral statements forming the gist of the offense must be set out in as nearly the exact words as possible and always be followed by the words “or words to that effect”, since proof will generally vary as to a word or words.

38. Surplusage.—In drawing up specifications all extraneous matter is to be carefully avoided, and nothing shall be alleged except that which is essential to set forth all the material elements of the offense. Unnecessary averments in a specification may ordinarily be rejected as surplusage, or treated as struck out, if without them the pleading remains adequate. Such allegations do not render the specification fatally defective, but are not required by law and only serve to increase the burden on the prosecution.

39. Aider of defective specification.—If a specification, while defective because of failure to allege some particular fact or element essential to the offense, nevertheless contains sufficient information fairly to apprise the accused of the offense intended to be charged, then, if the accused makes no objection to the specification on the ground of such omission, and if the evidence adduced supplies the omission, or if the accused pleads guilty, a finding by the court that the specification is proved will generally cure such defect.

40. Same: Exceptions.—(1) When it appears from the record that the accused was in fact misled by such failure, (2) that his substantial rights were in fact prejudiced thereby, or (3) the existence of such omitted fact or element is negated by the language of the defective specification.

41. Principals and accessories.—In view of 18 U. S. Code 550 (§ 332 Criminal Code; LRNA, p. 1354), no distinction is to be made in charging principals and accessories before the fact. An accessory after the fact should be charged under the seventeenth paragraph of the 8th A. G. N.

42. How to charge attempts.—If an attempt is not provided for as a specific charge it should be alleged under the appropriate general charge.

43. What constitutes an attempt.—An attempt to commit a crime consists of three elements: (1) The intention to commit the crime, (2) performance of some act toward the commission of the crime, and (3) the failure to consummate the crime. It follows that one proven actually to have committed an offense cannot be found guilty of an attempt to do so and that a specification alleging such commission does not support a charge of attempt.

44. Additional clause to be added in time of war.—In time of war there is to be added to the end of each specification the averment "the United States then being in a state of war."

45. Introductory to sample specifications.—In the following sections the offenses considered most likely to arise in the service are dealt with in the order in which they appear in the articles for the government of the Navy and the limitations of punishment. Effort has been made to set forth in one place the essential elements of each offense; the lesser included offenses, if any; and a sample specification which satisfactorily sets out the offense.

46. Mutiny.—This is provided for in the 4th A. G. N., paragraph 1. Charges:

1.

Making	}	a	{	mutiny.
Attempting to make				
Uniting with				
			{	mutinous assembly.
2. Being

{	witness to	}	a	mutiny not doing his utmost to suppress it.
{	present at			
3. Knowing of

{	a mutinous assembly	}	}	not immediately communicating his knowledge to his
{	an intended mutiny			
			{	superior
			{	commanding
				} officer.

Elements: 1. Mutiny consists in an unlawful opposition or resistance to or defiance of superior military authority, with a deliberate purpose to usurp, subvert, or override the same. Simple violence without proof of purpose to usurp, subvert, or override authority is not mutiny. Specific intent is an essential element. To complete the offense an overt act of mutiny must occur. This may consist, however, of a persistent refusal or omission with the essential intent. To constitute mutiny it is not necessary that there should be a concert of several persons, though it will be rare that this is lacking.

Uniting with a mutiny is the offense of one who takes part in a mutiny at any stage of its progress, whether he engages in actively executing its purposes, or, being present, stimulates and encourages those who do.

A mutinous assembly differs from a mutiny in that, although the intent to commit a mutiny is entertained, no overt act has yet occurred.

2. The duty to suppress a mutiny may even extend in extreme cases to the taking of life. The word "utmost" means the utmost that may properly be called for by the circumstances of the situation, and in view of the rank, command, and abilities of the individual. To convict one of this charge the fact that a mutiny existed must be proved.

3. To convict of charge 3 it is essential that there be proof of the knowledge of the accused, the fact of a mutinous assembly or intended mutiny, and the neglect to give information.

Lesser included offenses: Under charge 1, "attempting to make" or "uniting with" under the charge of "making", and "mutinous assembly" under "mutiny."

Under any of the three charges, conduct to the prejudice of good order and discipline.

Sample specifications:

CHARGE I

MAKING A MUTINY

SPECIFICATION

In that A—— B. C——, seaman second class, U. S. Navy, D—— E. F——, fireman third class, U. S. Navy, and G—— H. I——, private, U. S. Marine Corps, while serving as general court-martial prisoners in the U. S. naval prison at the navy yard, ——, ——, having conspired each with the other to mutiny against the lawful authority of and escape from the lawful custody of U—— V. W——, coxswain, and X—— Y. Z——, seaman second class, U. S. Navy, stationed at said prison and on duty as sentinels over the aforesaid C——, F——, and I——, did, on or about September 5, 19—, while in the said prison and while in the lawful custody of the said W—— and the said Z——, make a mutiny against the lawful authority of the said W—— and the said Z——, in that they, the said C——, F——, and I——, did then and there by force and violence take from the said W—— a Colt automatic pistol and a bunch of keys, and did tie, bind, fasten, and secure, and assist in tying, binding, fastening, and securing the feet and hands of the said W—— and the said Z——, and did therein and thereby escape from the lawful custody of the said W—— and the said Z——; the United States then being in a state of war.

CHARGE II

ATTEMPTING TO MAKE A MUTINY

SPECIFICATION

* * * on board said ship, attempt to make a mutiny by urging the men of the first division of said ship concertedly to refuse to obey the lawful order of their division officer, X——— Y. Z———, lieutenant, U. S. Navy, and in the execution of said attempt did cause various members of said division to disregard and defy the lawful orders of the said Z——— to report for drill.

47. Disobedience of orders.—This is provided for in the 4th A. G. N., paragraph 2.

Charge: Disobeying the lawful order of his superior officer.

Elements: No specific intent is necessary, but the order must be understood, the accused know that it is from his superior officer, and the disobedience wilful.

“Superior officer” as here used includes petty and noncommissioned officers.

The order must relate to military duty and be one which the superior officer is authorized under the circumstances to give the accused. The accused cannot be convicted of this charge if the order was in fact illegal.

The form of the order is immaterial so long as it is definite and positive, as is the method by which it is transmitted to the accused; but the communication must amount to an order.

When the order is to be executed in the future, neglect to comply therewith is not, as a rule, chargeable under this article but under the charge of conduct to the prejudice of good order and discipline, and the same is true of a refusal to obey such an order before the time set for its execution.

Failure to comply with the Navy Regulations or with general orders is not an offense under this charge, but under the 8th A. G. N., paragraph 20.

Disobedience of a local order is an offense under the general charge. Nonperformance by a subordinate of routine duty is properly charged as neglect of duty.

Lesser included offense: Conduct to the prejudice of good order and discipline.

Sample specifications:

CHARGE

DISOBEYING THE LAWFUL ORDER OF HIS SUPERIOR OFFICER

SPECIFICATION 1

* * * having, on or about May 19, 19—, on board said ship, been lawfully ordered by one X—— Y. Z——, lieutenant, U. S. Navy, the executive officer of said ship, to superintend the work of breaking out the fore hold, did then and there refuse to obey and did wilfully disobey said lawful order.

SPECIFICATION 2

* * * to submit to the administration of typhoid prophylaxis, did then and there refuse to obey and did wilfully disobey said lawful order.

SPECIFICATION 3

* * * to cease being noisy and disorderly, did then and there refuse to obey and did wilfully disobey said lawful order.

SPECIFICATION 4

* * * to go to the berth deck of said ship and perform extra duty in accordance with the sentence of a summary court-martial, did then and there refuse to obey and did wilfully disobey said lawful order.

SPECIFICATION 5

* * * not to leave said first steamer before the hour of 4 p. m., on the day aforesaid, did thereafter, at about 3 : 30 p. m., on said day, wilfully, wrongfully, and without proper authority, leave said first steamer and go to the canteen of said ship, and did thereby wilfully disobey said lawful order.

SPECIFICATION 6

* * * to cease annoying and bumping into a certain woman, by name to the relator unknown, did, then and there refuse to obey, and did wilfully disobey said lawful order.

SPECIFICATION 7

* * * to remain in a taxicab at said barracks until he, the said U——, returned to said taxicab, did, then and there, wilfully,

wrongfully, and without proper authority, leave said taxicab, and did, therein and thereby, wilfully disobey said lawful order, the United States then being in a state of war.

48. Striking and assaulting his superior officer.—This is provided for in the 4th A. G. N., paragraph 3.

Charges:

1. {Striking
Assaulting} his superior officer while in the execution of the duties of his office.

2. {Attempting
Threatening} to strike his superior officer while in the execution of the duties of his office.

Elements: To strike means to inflict an intentional blow.

An assault is an unlawful offer or attempt with force or violence to do a corporal hurt to another. Rushing, aiming a blow, or pointing a weapon at another is an assault. It is the apprehension of hurt, not the real design of the offender, that constitutes the offense.

There must be intent, actual or apparent, to inflict corporal hurt on another.

There must be some overt act toward carrying out such intent as opposed to mere preparation.

The force or violence must be physical: mere words, however threatening, or insulting gestures are not in themselves sufficient to constitute an assault.

It is immaterial that the offender is not in a position to consummate the threatened injury, provided that the superior officer believes there is a present ability to injure him. Example: Although a weapon pointed at a person is unloaded, this may still constitute an offense.

An officer may be in the execution of the duties of his office without being on duty in the strictly military sense. This phrase may properly be defined: In the performance of an act or duty either pertaining or incident to his office or legal or appropriate for an officer of his rank and office to perform. An officer is deemed to be in the execution of his office when engaged in any act or service required or authorized to be done by him by statute, regulation, the order of a superior, or usage of the service.

Lesser included offenses: The offenses given in section 61. Conduct to the prejudice of good order and discipline.

Sample specifications:

CHARGE I

STRIKING HIS SUPERIOR OFFICER WHILE IN THE EXECUTION OF THE DUTIES OF HIS OFFICE

SPECIFICATION 1

* * * in the wardroom of said ship, when ordered by one X—— Y. Z——, commander, U. S. Navy, the executive officer of said ship, to get into proper uniform, wilfully, maliciously, and without justifiable cause, strike the said Z——, who was then and there in the execution of the duties of his office.

SPECIFICATION 2

* * * wilfully, maliciously, and without justifiable cause, strike one W—— X. Y——, corporal, U. S. Marine Corps, who, in the execution of his duties as corporal of the guard at said prison, was then and there inspecting the cells of prisoners undergoing solitary confinement.

SPECIFICATION 3

* * * wilfully, maliciously, and without justifiable cause, strike one Y—— W. X——, chief boatswain's mate, U. S. Navy, who, in the execution of his duties as police petty officer of said ship, was then and there placing said —— in confinement.

CHARGE II

ASSAULTING HIS SUPERIOR OFFICER WHILE IN THE EXECUTION OF THE DUTIES OF HIS OFFICE

SPECIFICATION

* * * at the said station, wilfully, maliciously and without justifiable cause, assault one U—— V. W——, gunner's mate second class, U. S. Navy, who was then and there in the execution of his duties acting as petty officer of the guard.

CHARGE III

ATTEMPTING TO STRIKE HIS SUPERIOR OFFICER WHILE IN THE EXECUTION OF THE DUTIES OF HIS OFFICE

SPECIFICATION

* * * when ordered by one T—— U. V——, lieutenant, U. S. Navy, attached to and serving on board said ship, to get into

proper uniform, wilfully, maliciously, and without justifiable cause, attempt to strike the said V——, who was then and there in the execution of the duties of his office.

CHARGE IV

THREATENING TO STRIKE HIS SUPERIOR OFFICER WHILE IN THE EXECUTION OF THE DUTIES OF HIS OFFICE

SPECIFICATION

* * * when brought to the mast by order of the officer of the deck, one T—— U. V——, lieutenant, U. S. Navy, to explain his, the said C——'s absence from anchor watch, say to him, the said V——, "I may get a court-martial for it, but I am going to knock your block off", or words to that effect.

49. Desertion in time of war.—This is provided for in the 4th A. G. N., paragraph 6.

Charges:

1. Desertion in time of war.

2. Enticing another to desert in time of war.

Elements: The elements of these offenses are the same as for the corresponding offenses in time of peace.

Desertion is consummated whenever the absence and the requisite intent concur. If this concurrence is in time of peace, prior to the declaration of war, the offense is simple desertion, notwithstanding that the absence may continue during war.

Conviction of desertion in time of war must carry with it a discharge.

There is no such charge as "Attempting to desert in time of war." This offense should be charged as "Conduct to the prejudice of good order and discipline."

Lesser included offenses: Absence without or over leave; conduct to the prejudice of good order and discipline.

Sample specifications:

CHARGE I

DESERTION IN TIME OF WAR

SPECIFICATION

(Same as in sec. 76, adding the words "the United States then being in a state of war.")

CHARGE II

ENTICING ANOTHER TO DESERT IN TIME OF WAR

SPECIFICATION

* * * with the intent and for the purpose of enticing one B—— C. D——, apprentice seaman, U. S. Navy, attached to and serving at said training station, to desert from said training station and from the U. S. naval service, write and post, and cause to be written and posted and delivered to the said D——, a letter in tenor as follows: “* * *,” and he, the said C——, did therein and thereby, then and there, entice another, namely, the said D——, to desert from the U. S. Navy, the United States then being in a state of war.

50. Sleeping on watch.—This is provided for in the 4th A. G. N., paragraph 8.

Charge: Sleeping upon his watch.

Lesser included offenses: Culpable inefficiency in the performance of duty; conduct to the prejudice of good order and discipline.

Sample specifications:

CHARGE

SLEEPING UPON HIS WATCH

SPECIFICATION 1

* * * having, on August 7, 19—, been regularly posted as a sentinel on watch on post number five at said navy yard, did, at or about 10:00 p.m., on said date, sleep while on said watch.

SPECIFICATION 2

* * * having, at or about 4:00 a. m., June 11, 19—, relieved the officer of the deck and taken over the watch on board said ship, did, between the hours of 5:00 and 6:00 a. m., on said date, sleep while on watch as officer of the deck of said ship.

51. Leaving station.—This is provided for in the 4th A. G. N., paragraph 9.

Charge: Leaving his station before being regularly relieved.

Lesser included offense: Conduct to the prejudice of good order and discipline.

Sample specification:

CHARGE

LEAVING HIS STATION BEFORE BEING REGULARLY RELIEVED

SPECIFICATION

* * * while regularly detailed and stationed on duty as a police petty officer of said ship at the time and place aforesaid, without authority leave his station before being regularly relieved.

52. Destruction of public property.—This is provided for in the 4th A. G. N., paragraph 11.

Charge:

Unlawfully setting on fire }
Unlawfully destroying } public property.

Elements: The intent to set on fire or destroy must be proved. The word “unlawfully” is necessary in the specification because it appears in the statute.

Lesser included offenses: The offenses given in section 71; scandalous conduct tending to the destruction of good morals.

Sample specifications:

CHARGE

UNLAWFULLY DESTROYING PUBLIC PROPERTY

SPECIFICATION 1

* * * while regularly detailed as a member of the landing force of said ship, wilfully and unlawfully destroy about fifty pounds of canned corned beef, public property of the United States, not at the time in the possession of an enemy, pirate, or rebel.

SPECIFICATION 2

* * *, having, on or about September 25, 19—, been placed in confinement in the brig of said ship did, on said date in said brig, wilfully and unlawfully break the glass in the port of the cell in which he was confined.

53. Murder.—This is provided for in the 6th A. G. N. It must have been committed by a person belonging to a public vessel of the United States and outside of the territorial jurisdiction thereof.

Charge: Murder.

Elements: Murder is the unlawful killing of a human being with malice aforethought (2).

(2) Every murder perpetrated by poison, lying in wait, or any other kind of willful, deliberate, malicious, and premeditated killing or committed in the perpetration of, or

The death must take place within a year and a day of the act or omission that caused it, and the offense is committed at the place of such act or omission although the victim may have died elsewhere.

“Unlawful” means without legal justification or excuse.

Malice does not necessarily mean hatred or personal ill will toward the person killed, nor an actual intent to take his life, or even to take anyone's life. The use of the word “aforethought” does not mean that the malice must exist for any particular time before commission of the act, or that the intention to kill must have previously existed. It is sufficient that it exist at the time the act is committed.

Lesser included offenses: Manslaughter, scandalous conduct tending to the destruction of good morals; assaulting and striking (under the proper charges).

CHARGE

MURDER

SPECIFICATION

* * * on board the U. S. S. ———, then at sea without the territorial jurisdiction of the United States, did, on or about March 28, 19—, on board said ship, wilfully, feloniously, with malice aforethought, and without justifiable cause, assault, shoot at, and

attempt to perpetrate, any arson, rape, burglary, or robbery; or perpetrated from a pre-meditated design unlawfully and maliciously to effect the death of any human being other than him who is killed, is murder in the first degree. Any other murder is murder in the second degree.

18 U. S. Code 454 provides for the punishment of murderers as follows: “Every person guilty of murder in the first degree shall suffer death. Every person guilty of murder in the second degree shall be imprisoned not less than ten years and may be imprisoned for life.”

This latter section is modified by 18 U. S. Code 567, which provides: “In all cases where the accused is found guilty of the crime of murder in the first degree, or rape, the jury may qualify their verdict by adding thereto ‘without capital punishment’; and whenever the jury shall return a verdict qualified as aforesaid, the person convicted shall be sentenced to imprisonment for life.”

It will be noted that in civil courts of the United States death is mandatory for murder in the first degree unless the jury otherwise provides, in which event life imprisonment is mandatory, and that imprisonment for not less than 10 years is mandatory for murder in the second degree, but that death is not an authorized punishment for that crime. These provisions of the Code are not controlling in cases tried by naval courts-martial. There being no degree of murder recognized in cases of which such courts-martial have jurisdiction (art. 6, A. G. N. and sec. 457 post). However, art. 51, A. G. N., makes it the duty of naval courts-martial to adjudge a punishment “adequate to the nature of the offense”, while art. 7, A. G. N., empowers a court-martial to adjudge imprisonment at hard labor in any case where it is authorized to adjudge the punishment of death, and in applying the provisions of these articles it is deemed proper that consideration be given to the above-quoted sections of the Criminal Code. Accordingly, murder committed under such circumstances as to fall within the statutory definition of murder in the second degree should not be punished by death. For “manslaughter” see sec. 119.

strike with a bullet fired by him, the said C——, from a deadly weapon, to wit, from a loaded Colt automatic pistol, caliber forty-five, one X—— Y. Z——, seaman second class, U. S. Navy, and did therein and thereby then and there inflict a mortal wound in and upon the neck of the said Z——, of which said mortal wound so inflicted, as aforesaid, the said Z—— died at or about 3:00 a. m., on March 29, 19—.

54. Falsehood.—This is provided for under the 8th A. G. N., paragraph 1.

Charge: Falsehood.

Elements: The false representation must be made officially with intent to deceive, must be such as to deceive a reasonably prudent person and must be material and pertinent matter which the accused does not believe to be true, as to some past or existing fact or circumstance and not a mere expression of opinion or a promise or a frivolity. Equivocation or failure squarely to answer is not falsehood.

The specification should include direct and specific allegations negating the truth of the alleged false statements, together with affirmative averments setting up the truth by way of antithesis.

Lesser included offense: Conduct to the prejudice of good order and discipline.

Sample specifications:

CHARGE

FALSEHOOD

SPECIFICATION 1

* * * upon a statement made to the commanding officer of said receiving station, represent his true name to be D—— E. F——, and his rate to be boatswain's mate first class, U. S. Navy, which said representation was knowingly false and intended to deceive, as he, the said C——, well knew.

SPECIFICATION 2

* * * address and cause to be delivered to one X—— Y. Z——, captain, U. S. Navy, a letter in tenor as follows: (here quote letter verbatim), he the said O——, well knowing that the aforesaid letter contained false statements, namely the statements: "(set out statements relied on)", whereas in truth and in fact (here allege affirmatively what was the truth); which said statements were knowingly false and intended to deceive, as he, the said O——, well knew.

55. Drunkenness.—This is provided for in the 8th A. G. N., paragraph 1.

Charge: Drunkenness.

Elements: Any intoxication from alcoholic liquor which is sufficient sensibly to impair the rational and full exercise of the mental and physical faculties to a degree that will incapacitate for the proper performance of any duty which a person of the rank or rate of the accused could properly be called upon to perform, constitutes drunkenness.

If the drunkenness occur on duty this must be alleged as an aggravation, as a greater limit of punishment is provided in such a case.

Sample specifications:

CHARGE

DRUNKENNESS

SPECIFICATION 1

* * * was, on or about March 6, 19—, on board said ship, not having been on liberty, under the influence of intoxicating liquor, and thereby incapacitated for the proper performance of duty.

SPECIFICATION 2

* * * while on duty as sergeant of the guard at said barracks, under the influence of intoxicating liquor, and thereby incapacitated for the proper performance of duty.

56. Gambling.—This is provided for in the 8th A. G. N., paragraph 1.

Charge: Gambling.

Elements: Gambling is not a common-law offense. It is not defined in any statute of the United States. Congress must have used the word in this article in its commonly accepted meaning, which, according to Webster, is, properly, the act of playing or gambling for stakes. "In the strict sense of the term gambling implies a playing or gaming, as at checkers, dice, cards, horse racing, cock-fighting, or some other sport or contest, as well as a staking or risking of money to be lost or won on the issue. In this sense it does not include cases of mere wager or betting on the issue of an uncertain event, not involving any game or contest conducted in order that its event may determine the result of the wager, as lotteries, bets upon elections, and other forms of wagering contracts, etc."

CHARGE

GAMBLING

SPECIFICATION

* * * in number two fireroom of said vessel, gamble for money with cards.

57. Fraud (not against the United States).—This is provided for in the 8th A. G. N., paragraph 1.

Charge: Fraud in violation of article 8 of the articles for the government of the Navy.

Elements: To constitute actionable fraud it must appear: (1) That accused made a material representation; (2) that it was false; (3) that when he made it he knew that it was false, or made it recklessly, without any knowledge of its truth and as a positive assertion; (4) that he made it with the intention that it should be acted upon by the person to whom made; (5) that this person acted in reliance upon it; and (6) that he thereby suffered injury. Each of these facts must be proved, as the absence of any one of them is fatal. Fraud without damage or damage without fraud is not actionable.

Lesser included offenses: Falsehood; scandalous conduct tending to the destruction of good morals.

Sample specifications:

CHARGE

FRAUD IN VIOLATION OF ARTICLE 8 OF THE ARTICLES FOR THE GOVERNMENT OF THE NAVY

SPECIFICATION 1

* * * at the ——— Hotel, in the city of ———, ———, wilfully, falsely, and with intent thereby to deceive for the purpose of thereby defrauding, represent to one D——— E. F———, manager of said hotel, in effect, that he, the said C———, had lost a pea-coat of the value of about twenty-two dollars (\$22.00), as a result of checking said pea-coat in the check-room of said hotel, whereas, in truth and in fact, he, the said C———, had not lost a pea-coat in the manner represented by him as aforesaid, as he, the said C———, well knew, and he, the said C———, did then and there, by means of said false representation, made as aforesaid, deceive and fraudulently obtain from the said F———, a sum of about twenty-two dollars (\$22.00) in lawful money of the United States, the property of the said hotel, and did then and there appropriate the same to his own use.

SPECIFICATION 2

* * * wilfully, falsely, and with intent to deceive for the purpose of thereby defrauding one J—— K. L——, private, U. S. Marine Corps, represent to the said L——, in effect, that he, the said I——, was authorized to collect for safe keeping any valuable property of enlisted men, whereas, in truth and in fact, he, the said I——, was not authorized to collect for safe keeping property of enlisted men as aforesaid, as he, the said I——, well knew, and he, the said I——, did then and there, by means of said false representations, made as aforesaid, deceive and fraudulently obtain from the said L——, a watch, of the value of about five dollars (\$5.00), said watch being the property of the said L——, and did, then and there, appropriate said watch to his own use.

SPECIFICATION 3

* * * wilfully, knowingly, and with intent to deceive for the purpose of thereby defrauding one D—— E. F——, the wife of X—— Y. F——, chief machinist's mate, U. S. Navy, a prisoner in the brig at the said receiving station, represent to the said D—— E. F—— in effect, that he, the said O——, was endeavoring to have him, the said X—— Y. F——, restored to duty on six months' probation and detailed to duty at the New York Shipbuilding plant, whereas in truth and in fact he, the said O——, was not endeavoring to have him, the said X—— Y. F——, restored to duty on six months' probation and detailed to duty at the New York Shipbuilding plant as aforesaid, as he, the said O——, well knew, and he, the said O——, did, then and there, by means of the said false representations, made as aforesaid, deceive and fraudulently obtain from her, the said D—— E. F——, a sum of about fifty dollars (\$50.00), in lawful money of the United States, said money being the property of the said D—— E. F——, and did, then and there, appropriate the said sum of money to his own use.

58. Theft.—This is provided for in the 8th A. G. N., paragraph 1.
Charge: Theft.

Elements:

In larceny there must be a taking and carrying away. When actual physical possession is obtained and the property moved the least distance, the taking and carrying away is complete.

The taking must be from the actual or constructive possession of the owner without his consent. Ownership may be in any person

who is in peaceable possession of the property. The actual condition of the legal title is immaterial. The possession of goods may be in one person, although the goods themselves be in the actual manual control of another. One retains the constructive possession of property, although it is actually out of his control until some one else takes possession, except in the case of abandoned property. Acceptance of possession, with the required intent, knowing that a mistake is being made, is larceny.

The felonious intent in larceny is that entertained by a thief; i. e., a fraudulent intent to deprive the owner permanently of his property in the goods or of their value or a part of their value. Unless such a purpose exist with the taking and carrying away by trespass there is no larceny.

Value under a charge of theft should, if possible, always be alleged for two reasons, the first being in order that it may appear specifically that the property is of some value, for property of no value is not the subject of larceny, and secondly in order that the degree of the offense may be determined, as the punishment for the crime of theft varies according to the value of the property stolen. It is not necessary that the exact value of the property stolen be set out, the approximate value thereof being sufficient. The law (18 U. S. Code 466) provides that the value of a written instrument is the amount of money which in any contingency might be collected thereon.

Lesser included offense: Scandalous conduct tending to the destruction of good morals.

Sample specifications:

CHARGE

THEFT

SPECIFICATION 1

* * * feloniously take, steal, and carry away a check for the amount and value of two hundred and thirty-eight dollars (\$238.00), numbered two hundred and eight, and drawn upon the assistant treasurer of the United States, at ———, ———, by X—— Y. Z——, assistant paymaster, U. S. Marine Corps, with the rank of major, payable to the order of D—— E. F——, corporal, U. S. Marine Corps, serving at said barracks, the said check being the property of the said F——, and at the time aforesaid in the possession of a mail orderly of the said barracks, one G—— H. I——, private first class, U. S. Marine Corps; and he, the said C——, did then and there appropriate the said check to his own use.

SPECIFICATION 2

* * * feloniously take, steal, and carry away from the possession of one M ——— N. O ———, machinist, U. S. Navy, one tin box of the value of about two dollars (\$2.00), about one pint of cleaning fluid of the value of about one dollar (\$1.00), and a sum of about thirty dollars (\$30.00) in lawful money of the United States, said box, cleaning fluid, and money, of the amounts, quantities and values aforesaid, being the property of the said O ———, and he, the said L ———, did then and there appropriate the same to his own use.

59. Scandalous conduct.—This is provided for in the 8th A. G. N., paragraph 1. This charge may also be considered as coming under the 22d A. G. N. (*Smith v. Whitney*, 116 U. S. at p. 183. *See also Carter v. McClaughy*, 183 U. S. 365).

Charge: Scandalous conduct tending to the destruction of good morals.

Elements: Most of the offenses specified in the articles for the government of the Navy are of a military character or are against the United States. The bulk of the common law and statutory offenses come under this charge and under the 22d A. G. N.

Offenses of a scandalous nature for which no specific charges are provided should be laid under this charge. These offenses are so diverse that it is impracticable to set forth the elements of each. Where the offense is similar to that under a specific charge appearing elsewhere in this chapter, the elements set forth thereunder should be examined.

As a number of attempted or uncompleted offenses are not specified, most such, involving scandalous acts, must be laid under this charge, and it follows that this charge is a lesser included charge in the specific charges of a scandalous nature.

For convenience, the nature of the offense alleged in the following sample specifications is indicated in parentheses, but this does not form part of the charge and should not be copied.

Sample specifications:

CHARGE

SCANDALOUS CONDUCT TENDING TO THE DESTRUCTION OF GOOD MORALS

SPECIFICATION 1

(Aid in defrauding)

* * * at the request of one D——— E. F———, trumpeter, U. S. Marine Corps, write and make out a check numbered four

hundred twenty-two, dated May 24, 19—, drawn upon the First National Bank of ———, ———, payable to the order of “D——— E. F———”, the same being the said F———, for the sum of fifteen dollars (\$15.00), and bearing the name “A——— B. C———”, the same being the name of the said C———, as drawer of the said check, and deliver to the said F———, the said check, for the purpose of enabling the said F——— to negotiate the said check by falsely representing it to be a valuable negotiable instrument, as a result of which drawing and delivery of the said check the said F——— was enabled to, and did, by falsely representing the said check to be a valuable negotiable instrument, fraudulently obtain from one G——— H. I———, cash in exchange for said check in the amount stated on the face thereof (or as the case may be), the said C——— at the time of the drawing of the said check not having and not intending to have on deposit in the said bank sufficient funds to cover the payment of the said check, as both he, the said C———, and he, the said F———, then and there well knew.

SPECIFICATION 2

(Attempt to defraud)

* * *, wilfully, falsely, and with intent to deceive for the purpose of thereby fraudulently obtaining from the State of ———, a sum of about one hundred dollars (\$100.00), state in substance to one W——— X. Y———, then employed in the naval bureau, adjutant general’s office, of said State, in charge of paying and causing to be paid the citizens of said State who served in the naval service of the United States during the World War the one hundred dollars gratuity provided by the laws of said State to be paid to each of the citizens of said State who served in the military or naval service of the United States during the World War, that he, the said V———, had made proper application for said gratuity and had never received said gratuity or any part thereof, whereas, in truth and in fact, he, the said V———, well knew that he had received said gratuity of one hundred dollars (\$100.00), and the said V——— did. therein and thereby, then and there, attempt to defraud the State of ——— of a sum of about one hundred dollars (\$100.00).

SPECIFICATION 3

(Attempted theft)

* * *, endeavor to enter the locker of one D——— E. F———, corporal, U. S. Marine Corps, by wilfully breaking the lock on

the door thereof, with the intent feloniously to take, steal, and carry away the property of the said F—— contained therein.

SPECIFICATION 4

(Attempt to destroy Government property)

* * *, wilfully, wrongfully, and without proper authority, attempt by hammering with a metal bar to destroy property of the United States, to wit, a lock on the door of the canteen of said ship.

SPECIFICATION 5

(Acts in the nature of false pretenses)

* * *, at the post office in the said station, knowingly, wilfully, and fraudulently attempt to obtain and receive into his possession from the said post office a registered letter addressed as follows, to wit, "P—— Q. R——, U. S. S. ——, ——, ——", by falsely and fraudulently representing that he, the said O——, was the said R—— to whom said registered letter was addressed.

SPECIFICATION 6

(Falsify his accounts)

* * *, while so serving as post exchange officer in charge of the post exchange at the U. S. marine barracks, ——, ——, did, on or about May 1, 19—, knowingly present and cause to be presented to the exchange council at said barracks a balance sheet, covering the period from April 1, 19—, to April 30, 19—, and certified as true by the said F——, to the effect that on that date, to wit, May 1, 19—, there was on deposit in the —— Bank of ——, ——, to the credit of said post exchange a sum of about fourteen thousand five hundred twenty dollars and thirty-one cents (\$14,520.31); whereas, in truth and in fact, there was at that time on deposit in said bank to the credit of said post exchange a sum of about fourteen thousand two hundred thirty-three dollars and four cents (\$14,233.04), as he, the said F——, then and there well knew; which said certified balance sheet was false, and, as such, made and presented by the said F—— to the said exchange council knowingly and wilfully and with intent to deceive.

SPECIFICATION 7

(False swearing)

* * * having, on or about November 13, 19—, on board said ship, been duly sworn by Captain W—— W. Y——, U. S. Navy, commanding officer of said ship, did, at the time and place aforesaid, subscribe and swear to as true a statement in words and figures as follows, to wit:

“(Here quote verbatim the statement submitted.)”
and he, the said H——, having, on or about December 1, 19—, at said navy yard, been duly sworn as a witness before a court of inquiry by the president of said court, convened by lawful order of the Secretary of the Navy at the time and place last aforesaid, to inquire into alleged frauds practiced by certain contractors furnishing supplies to the United States, did, at the time and place last aforesaid, testify as follows:

“(Here quote verbatim the testimony containing false statements.)”

and he, the said H——, did, at the times and places aforesaid, by subscribing and swearing to said statement before said Captain Y——, and by testifying as aforesaid, wilfully, falsely, and corruptly make statements under oath inconsistent the one with the other, one of which was, at the time of making the same, known to him, the said H——, to be false and misleading, and was made by him, the said H——, with the intent and purpose of defeating the ends of justice. (3)

SPECIFICATION 8

(Permit lewd pictures to be taken)

* * * while indulging in illicit sexual intercourse with a certain woman, not his wife, by name N—— O. P——, did, on or about January 10, 19—, in a room in said recruiting station in said city, knowingly, wilfully, indecently, and lewdly, permit and induce one R—— S. T——, seaman first class, U. S. Navy, to take photographic pictures of him, the said M——, and her, the said P——, while indulging as aforesaid, she, the said P——, being then and there entirely nude.

(3) Such a specification was not disturbed in *Ex parte Dickey*, 204 Fed. 322.

SPECIFICATION 9

(Propose fornication)

* * * make indecent and improper proposals to one D—— E. F——, a negro woman, to the effect that she, the said F——, engage in illicit sexual intercourse with him, the said C——.

SPECIFICATION 10

(Acts short of sodomy)

In that G—— H. I——, boatswain's mate second class, and J—— K. L——, seaman second class, U. S. Navy, while so serving on board the U. S. S. ——, did, on or about May 13, 19—, in the ordnance storeroom of said ship, wilfully and knowingly lie together with indecent, lewd, and lascivious intent, each with his person indecently exposed and in contact with that of the other.

SPECIFICATION 11

(Same)

* * * , did, on or about February 5, 19—, on a bunk in the crew's quarters on board said ship, wilfully and knowingly, with indecent, lewd, and lascivious intent, lie with his privates indecently exposed and in contact with the indecently exposed body of one X—— Y. Z——, seaman second class, U. S. Navy.

SPECIFICATION 12

(Same)

* * * , wilfully and knowingly, indecently and lewdly, permit one R—— S. T——, boatswain's mate first class, U. S. Navy, to lie with indecent, lewd, and lascivious intent, with his, the said T——'s, privates indecently exposed and in contact with the indecently exposed body of him, the said Z——.

SPECIFICATION 13

(Same)

* * * , endeavor to take down the trousers of one X—— Y: Z——, seaman second class, U. S. Navy, for the purpose and with the intent of enabling him, the said T——, to commit sodomy in and upon the body of the said Z——.

SPECIFICATION 14

(Propose sodomy)

* * *, in an indecent, lewd, and lascivious manner, and with the intention thereby to convey to one Z—— V. W——, seaman second class, U. S. Navy, an indecent, lewd, and lascivious proposal, ask and attempt to persuade the said W——, to permit him, the said T——, to commit with him, the said W——, an act of sodomy.

SPECIFICATION 15

(Oral coition)

* * *, wilfully and knowingly, in an indecent, lewd, and lascivious manner, take the penis of one D—— E. F——, seaman second class, U. S. Navy, in his, the said C——'s, mouth.

SPECIFICATION 16

(Same)

* * *, wilfully and knowingly, indecently and lewdly, permit one A—— B. C——, seaman second class, U. S. Navy, to take the penis of him, the said F——, in his, the said C——'s, mouth.

SPECIFICATION 17

(Propose oral coition)

* * *, indecently, lewdly, and lasciviously, and with the intention thereby to convey to one J—— K. L——, private, U. S. Marine Corps, an indecent, lewd, and lascivious proposal, make and cause to be delivered to the said L——, a certain indecent, lewd, and lascivious note in writing in tenor as follows: “* * *”, and he, the said I——, did therein and thereby, then and there, intend to convey to the said L——, that he, the said I——, desired the said L——, to permit him, the said I——, to take the penis of him, the said L——, in his, the said I——'s, mouth.

SPECIFICATION 18

(Force another to commit oral coition)

* * *, in an indecent, lewd, and lascivious manner, and with the intention thereby to influence one J—— K. L——, private, U. S. Marine Corps, to commit an indecent, lewd, and lascivious act,

tell the said L——, that if he, the said L——, did not take the penis of one G—— H. I——, seaman second class, U. S. Navy, in his, the said L——'s, mouth, that he, the said O——, would make him, the said L——, do so; as a result of which the said L—— did, then and there, take the penis of the said I——, in his, the said L——'s, mouth.

60. Cruelty.—this is provided for in the 8th A. G. N., paragraph 2.

Charges:

Cruelty toward	} a person subject to his orders.
Oppression of	
Maltreatment of	

The charge generally used is the last, as maltreatment includes both of the other two.

Lesser included offense: Conduct to the prejudice of good order and discipline.

Sample specification:

CHARGE

MALTREATMENT OF A PERSON SUBJECT TO HIS ORDERS

SPECIFICATION

* * * while on duty as a turnkey of the barracks brig at said barracks, wilfully and without justifiable cause maltreat one D—— E. F——, mess attendant third class, U. S. Navy, a prisoner in said brig subject to the orders of the said C——, by assaulting and striking the said F——.

61. Quarreling.—This is provided for in the 8th A. G. N., paragraph 3.

Charge:

Quarreling with	} another person in the Navy.
Striking	
Assaulting	

A quarrel not resulting in an assault would very rarely be a court-martial offense. "Striking" and "Assaulting" are explained in section 48.

Lesser included offense: Conduct to the prejudice of good order and discipline.

Sample specifications:

CHARGE I

STRIKING ANOTHER PERSON IN THE NAVY

SPECIFICATION 1

* * * wilfully, maliciously, and without justifiable cause, strike one D—— E. F——, then a seaman first class, U. S. Navy.

SPECIFICATION 2

* * * , in E-3 barracks at the said naval training station, wilfully, maliciously, and without justifiable cause, strike one J—— K. L——, seaman second class, U. S. Navy, who was then and there regularly on duty as a sentinel on post in said barracks

SPECIFICATION 3

* * *, on board said ship, wilfully, maliciously, and without justifiable cause, assault and strike with a dangerous weapon, to wit, a wrench, one V—— W. X——, fireman second class, U. S. Navy, serving on board said ship, and did therein and thereby then and there inflict on said X——'s head a wound about one inch and a half in length.

CHARGE II

ASSAULTING ANOTHER PERSON IN THE NAVY

SPECIFICATION

* * *, in E-3 Barracks, at the said naval training station, wilfully, maliciously, and without justifiable cause, assault one J—— K. L——, then a seaman second class, U. S. Navy, who was then and there regularly on duty as a sentinel on post at the said barracks.

62. Reproachful words.—This is provided for in the 8th A. G. N., paragraph 3.

Charge:

Using { provoking { words
 { reproachful { gestures } toward another person in the
 { menaces } Navy.

Elements: The words of the charge must be taken in their usual acceptation. To constitute the offense it is essential that the person toward whom the words, gestures, or menaces were directed was actually present at the time.

Lesser included offense: Conduct to the prejudice of good order and discipline.

Sample specifications:

CHARGE I

USING PROVOKING WORDS TOWARD ANOTHER PERSON IN THE NAVY

SPECIFICATION

* * * while so serving as a general court-martial prisoner at the U. S. Naval prison, navy yard, ———, ———, did, on or about December 8, 19—, in a cell at the said prison, say to one D—— E. F——, private, U. S. Marine Corps, who was then and there in the execution of his duties, acting as corporal of the guard, "You * * *", or words to that effect.

CHARGE II

USING REPROACHFUL WORDS TOWARD ANOTHER PERSON IN THE NAVY

SPECIFICATION

* * * say to one H—— I. J——, mess attendant third class, U. S. Navy, "* * *", or words to that effect.

CHARGE III

USING PROVOKING AND REPROACHFUL WORDS, GESTURES, AND MENACES
TOWARD ANOTHER PERSON IN THE NAVY

SPECIFICATION

* * * while so serving as officer in charge of the U. S. Marine Corps recruiting station, ———, ———, did, on or about August 8, 19—, in the presence of one N—— O. P——, a civilian, in said recruiting station, use provoking and reproachful words, gestures, and menaces toward one Q—— R. S——, a passed assistant surgeon, Medical Corps, U. S. Navy, with the rank of lieutenant, serving at the recruiting station aforesaid, by shaking his fist in the face of the said S——, and saying to him, "That thing there reported me. That sneak is watching me and just waiting to report me for drinking", or words to that effect, he, the said M——, meaning and intending when uttering the words "that thing there" and "that sneak" to refer to the said S——.

63. Contempt of superior officer.—This is provided for in the 8th A. G. N., paragraph 6.

Charges:

1. Treating his superior officer with contempt.

2. Disrespectful in { language } to his superior officer while in
 { deportment } the execution of his office.

Elements: It is essential that the superior officer be present and in the execution of his office at the time, but it is immaterial whether the words or acts be directed toward him in his official or private capacity.

The accused must know that the person to whom the language or deportment was directed was, in fact, his superior officer.

Disrespect by deportment may be exhibited in a variety of modes—as by neglecting the customary salute, by a marked disdain, indifference, impertinence, undue familiarity, or other rudeness in the presence of the superior officer.

Lesser included offense: Conduct to the prejudice of good order and discipline.

Sample specifications:

CHARGE I

TREATING HIS SUPERIOR OFFICER WITH CONTEMPT

SPECIFICATION

* * * say in a disrespectful and contemptuous manner to one D—— E. F——, lieutenant, U. S. Navy, who was then and there in the execution of his office, “You are about the most incompetent misfit in the Navy; it is a disgrace to the Navy to let you board a ship on the starboard side; what mistake let you in”, or words to that effect.

CHARGE II

DISRESPECTFUL IN LANGUAGE TO HIS SUPERIOR OFFICER WHILE IN THE EXECUTION OF HIS OFFICE

SPECIFICATION 1

* * * having, on or about October 4, 19—, on board said ship, been ordered by the senior engineer officer of said ship, one J—— K. L——, lieutenant, U. S. Navy, who was then and there in the execution of his office, to inspect the clothing of his, the said I——’s, section of the engineer division, did, at the time and place aforesaid, say to the said L——, in a disrespectful manner, “I haven’t time to do that now”, or words to that effect.

SPECIFICATION 2

* * * passed assistant surgeon, Medical Corps, U. S. Navy, with the rank of lieutenant, while so serving on board the U. S.

S. ———, having on or about November 16, 19—, on board said ship, been informed by his superior officer, one P—— Q. R——, a surgeon, Medical Corps, U. S. Navy, with the rank of lieutenant commander, the senior medical officer of said vessel, who was then and there in the execution of his office, that he, the said R——, had reported the said O——'s failure to inspect the brig of said ship in accordance with his, the said R——'s orders, did then and there say to said R—— in a disrespectful manner: "Report me! Go ahead and report; you have put your foot in it; I give you that for a tip", or words to that effect.

SPECIFICATION 3

* * *, and while under a sentry's charge, upon hearing his superior officer, one V—— W. X——, lieutenant, U. S. Navy, who was then and there in the execution of his office, ask the sentry in charge of the said U——, who had broken the light in the brig, did, on or about December 19, 19—, on board said ship, say to the said X——, in a disrespectful manner, "I broke it, and I'd like to know what you are going to do about it", or words to that effect.

CHARGE III

DISRESPECTFUL IN DEPARTMENT TO HIS SUPERIOR OFFICER WHILE IN THE EXECUTION OF HIS OFFICE

SPECIFICATION

* * * assume a disrespectful attitude toward his superior officer, one D—— E. F——, boatswain's mate second class, U. S. Navy, who was then and there in the execution of his office, by placing his, the said C——'s, thumb to his nose and extending his fingers toward the said F——. (4)

64. Combinations against commanding officer.—This is provided for in the 8th A. G. N., paragraph 7.

Charge:

Joining in } a combination { to weaken the lawful authority of } his
 Abetting } { to lessen the respect due to } his
 commanding officer.

A combination is a union of men for the purpose of violating the law.

Abet means to encourage or set another on to commit a crime.

Lesser included offense: Conduct to the prejudice of good order and discipline.

(4) If this act were not toward his superior officer while in the execution of his office, it should be charged under the preceding section as a "provoking gesture."

Sample specification :

CHARGE

JOINING IN A COMBINATION TO LESSEN THE RESPECT DUE TO HIS
COMMANDING OFFICER

SPECIFICATION

In that A—— B. C——, coxswain, B—— C. D——, C—— D. E——, D—— E. F——, and E—— F. G——, seamen first class, and F—— G. H——, and G—— H. I——, seamen second class, U. S. Navy, while so serving on board the U. S. S. ——, acting jointly and in the pursuance of a common intent, did, on or about May 12, 19—, on board said ship, make and sign and cause to be made and signed, and post and cause to be posted on a bulkhead of said ship a letter, signed in the form known as a "round robin", in tenor as follows: "* * *."

65. Seditious or mutinous words.—This is provided for in the 8th A. G. N., paragraph 8.

Charge:

Uttering $\left\{ \begin{array}{l} \text{seditious} \\ \text{mutinous} \end{array} \right\}$ words.

Elements: Mutiny is against military authority; sedition against civil.

Seditious words tend to degrade and vilify the Constitution, to promote insurrection and circulate discontent, to asperse justice and anyway impair the exercise of the functions of Government. The words must have been knowingly uttered and with seditious intent. Sedition implies a resistance to lawful civil power.

Similarly mutinous words are words tending to have the same effect as regards military or naval functions.

Lesser included offense: Conduct to the prejudice of good order and discipline.

CHARGE

UTTERING SEDITIOUS WORDS

SPECIFICATION

* * * in the presence of various persons on board said ship, knowingly and with intent thereby to circulate discontent and to impair the exercise of the functions of the Government of the United States, say to said persons: "The American people are a bunch of fools. President Wilson is a * * *. In the next war I will

be fighting against you. One reason I hope to be transferred to a destroyer is that I hope to be sunk and taken as a prisoner to Germany. I think that the Germans are right to sink the ships the way they have; to hell with the methods, it is the cause that counts. The Germans will win the war, for they are a superior people", or words to that effect; the United States then being in a state of war.

66. Neglect of orders.—This is provided for in the 8th A. G. N., paragraph 9.

Charge:

Negligence. }
Carelessness } in obeying orders.

Elements: There is no practical distinction between negligence and carelessness. The order must, of course, be lawful.

Lesser Included Offense: Conduct to the prejudice of good order and discipline.

CHARGE

NEGLIGENCE IN OBEYING ORDERS

SPECIFICATION 1

* * * having on December 9, 19—, been duly discharged from attendance as a witness before a court of inquiry in session at the navy yard, ———, ———, with lawful orders from the Secretary of the Navy in tenor as follows: " * * *", did, during the period from about December —, 19—, until about 4:30 p. m., December 15, 19—, at ———, ———, neglect and fail to report in obedience thereto.

SPECIFICATION 2

* * *, having received lawful orders from the commanding officer of said hospital to receive for safe-keeping deposits of money and valuables of patients in said hospital, and to keep such deposits so received by him, the said L———, in the safe at said hospital until such money and valuables should be returned to such patients, and having on or about November 14, 19—, pursuant to said orders, received for safe-keeping from one M——— N. O———, machinist's mate second class, U. S. Navy, a patient in said hospital, a deposit of money of forty dollars (\$40.00), lawful money of the United States, did then and there neglect and fail to keep said deposit in said safe in obedience to said orders.

67. Culpably inefficient.—This is provided for in the 8th A. G. N., paragraph 9.

Charge: Culpable inefficiency in the performance of duty.

Elements: Culpable means deserving of blame or censure; being in or at fault; blamable. Inefficiency is want of power or energy sufficient for the desired effect; inefficacy; incapacity. In order to sustain a conviction under this charge it must be shown that the accused had been assigned and had entered upon the duty.

Lesser included offense: Conduct to the prejudice of good order and discipline.

Sample specifications:

CHARGE

CULPABLE INEFFICIENCY IN THE PERFORMANCE OF DUTY

SPECIFICATION 1

* * * while so serving as officer of the deck on board the U. S. S. ———, a steam vessel, making passage from ——— to ———, having been informed between 8:00 and 9:00 p. m., on March 13, 19—, that the said ship——— was approaching a sailing vessel, both said vessels being then off ———, ———, did then and there fail to issue and see effected such timely orders as were necessary to cause the said ship ——— to keep out of the way of said sailing vessel by passing astern of the said sailing vessel, as it was his duty to do, by reason of which inefficiency the said U. S. S. ——— collided, at the time and place aforesaid, with the said sailing vessel, being the schooner ———, of ———, ———, as a result of which collision the said schooner was sunk.

SPECIFICATION 2

* * *, having, as supply officer of said ship, at divers times between June 1, 19—, and August 31, 19—, issued to the officers' messes of said ship various quantities, amounts to the relator unknown, of beef, veal, and other meats charged to the general mess of said ship, did, then and there, fail to keep and cause to be kept a proper account of the issue of said provisions, as it was his duty to do.

SPECIFICATION 3

* * * passed assistant surgeon, Medical Corps, U. S. Navy, with the rank of lieutenant, while so serving at the U. S. navy yard, ———, ———, having on November 2, 19—, at the naval hospital at said navy yard, been applied to for treatment for a disease of the eyes of one M——— N. O———, lieutenant, U. S. Navy, stationed at the navy yard aforesaid, did, on the date and at the place afore-

said, apply a caustic to the eyes and eyelids of the said O—— in such manner as to cause serious injury to both eyes of the said O——, and seriously to impair the vision of the said O——.

SPECIFICATION 4

* * *, having, on or about April 4, 19—, received into his possession for his use on board said ship a copy of ——, the register number of said book being eight hundred sixteen, and well knowing that the said book contained confidential information, and that he, the said ——, was responsible for the safekeeping of said book, and that it was his duty to guard said book with extreme care, did, at some time between the dates of April 6, 19—, and July 5, 19—, exact date to the relator unknown, on board said ship, permit said book to pass from his, the said ——'s custody, and has ever since failed to account for said book.

68. Preventing destruction of public property.—This is provided for in the 8th A. G. N., paragraph 10.

Charge: Not using his best exertions to prevent the unlawful destruction of public property.

Elements: "Best" in this charge means most likely to succeed in the prevention. It must be shown that the accused knew that the destruction was unlawful and that he failed to take any steps to prevent it, or that he knowingly took steps which he knew or should have known were not the most likely to succeed in preventing the destruction.

Lesser included offense: Conduct to the prejudice of good order and discipline.

Sample specification:

CHARGE

NOT USING HIS BEST EXERTIONS TO PREVENT THE UNLAWFUL
DESTRUCTION OF PUBLIC PROPERTY

SPECIFICATION

* * * observing that a number of men at said station were engaged in unlawfully destroying hammocks, public property of the United States, by slashing and cutting each hammock with a knife, did, on or about February 15, 19—, at said station, neglect and fail to take any steps to prevent such destruction.

69. Stranding.—This is provided for in the 8th A. G. N., paragraph 11.

Charge:

Through { inattention } suffering a vessel { stranded.
 { negligence } of the Navy to be { run upon a rock.
 { } { } { run upon a shoal.
 { } { } { hazarded.

Elements: The distinction between inattention and negligence is not altogether apparent, as one may be the cause of the other. Inattention means want of attention or failure to pay attention; disregard; carelessness; or culpable failure to attend. Negligence means the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do. Stranded means run aground so that the ship is fast for a time. If a ship "touches and goes" she is not stranded; if she "touches and sticks" she is (5). Shoal is a sand, mud, or gravel bank or bar that makes the water shallow. Hazardred means put in danger of loss or injury.

Lesser included offenses: Culpable inefficiency in the performance of duty; neglect of duty; conduct to the prejudice of good order and discipline.

Sample specifications:

CHARGE I

THROUGH INATTENTION SUFFERING A VESSEL OF THE NAVY TO BE
STRANDED

SPECIFICATION

* * * while so serving in command of the U. S. S. ———, the said ship being, on February 26, 19—, under way in the inner harbor of ———, ———, standing out toward the breakwater at the entrance of said inner harbor, was then and there inattentive in the performance of his duty as commanding officer of said ship in that he did then and there fail personally to superintend the conning of said vessel; and he, the said C——, through said inattention, did suffer the said ship to be stranded on the outer edge of the eastern breakwater near the entrance of said inner harbor at about 6:00 p. m., on the day aforesaid.

(5) 16 *McDougle v. Royal Exchange Assurance*, 4 Comp. 282, quoted in *London Assurance v. Companhia de Moagens*, 167 U. S. 158.

CHARGE II

THROUGH NEGLIGENCE SUFFERING A VESSEL OF THE NAVY TO BE
STRANDED

SPECIFICATION . .

* * * while so serving as executive officer of the U. S. S. ———, and being, on August 2, 19—, temporarily in command of said ship, making passage from ——— to ———, the weather being foggy, did, nevertheless, neglect and fail to exercise proper care and attention in navigating said vessel while approaching ——— Island, in that he neglected and failed to make allowance for a known tidal current setting toward said island, and he, the said D——, through said negligence, did suffer the said U. S. S. ———, at about 5:25 p. m., on the day aforesaid to be stranded in ——— Bay, ——— Island.

CHARGE III

THROUGH NEGLIGENCE SUFFERING A VESSEL OF THE NAVY TO BE RUN
UPON A ROCK

SPECIFICATION 1

* * * while so serving in command of the U. S. S. ———, making passage from ——— to ———, did, on or about June 10, 19—, while approaching the harbor of ———, cause to be steered a course that lay over ——— Reef, near said harbor, and where there was at the same time available a wide, clear, and deep channel to the eastward of said reef, and this he did in the absence of any necessity of shaping a course over said reef rather than away therefrom, and he, the said F——, did then and there, in the manner aforesaid, suffer the said U. S. S. ——— to be run upon a rock, without justifiable cause, in consequence of which the said U. S. S. ——— was seriously injured.

SPECIFICATION 2

* * *, while so serving as navigator of the U. S. S. ———, cruising on special service in the ——— Ocean, off the coast of ———, on June 5, 19—, notwithstanding the fact that at about midnight June 4/5, 19—, the northeast point of ——— Island bore abeam and was about six miles distant, the said ship being then under way and making a speed of about ten knots, and well knowing the position of the said ship at the time stated, and that the charts of the locality were unreliable and the currents thereabouts

uncertain, did, then and there, neglect and fail to exercise proper care and attention in navigating said ship while approaching ——— Island, in that he neglected and failed to lay a course that would carry said ship clear of the last aforesaid island, and to change the course in due time to avoid disaster; and he, the said I——, through said negligence, did suffer the said ship to be run upon a rock off the southwest coast of ——— Island, at about 4.45 a. m., June 5, 19—, in consequence of which the said U. S. S. ——— was lost.

CHARGE IV

THROUGH NEGLIGENCE SUFFERING A VESSEL OF THE NAVY TO BE RUN UPON A SHOAL

SPECIFICATION

* * * well knowing that at about sunset of said day the said ship had nearly run her estimated distance from the 4 p. m., position, obtained and plotted by him, to the position of ———, and well knowing the difficulty of sighting ——— from a safe distance after sunset, did then and there fail to advise his commanding officer to lay a safe course for said ship to the northward before continuing on a westerly course as it was the duty of the said C—— to do; in consequence of which the said ship was at about 6:50 p. m., on the day above mentioned, run upon ——— Bank, in the ——— Sea, in about latitude — degrees, — minutes north, and longitude — degrees, — minutes west, and seriously injured.

70. False muster.—This is provided for in the 8th A. G. N., paragraph 14.

Charges:

1. Knowingly $\left\{ \begin{array}{l} \text{making} \\ \text{signing} \end{array} \right\}$ a false muster.
2. Knowingly $\left\{ \begin{array}{l} \text{aiding} \\ \text{abetting} \\ \text{directing} \\ \text{procuring} \end{array} \right\}$ the $\left\{ \begin{array}{l} \text{making} \\ \text{signing} \end{array} \right\}$ of a false muster.

Elements: Muster is the assembling, inspecting, entering upon the formal rolls, and officially reporting as a component part of the command of persons or public animals.

Lesser included offenses: Neglect of duty; conduct to the prejudice of good order and discipline.

Sample specification:

CHARGE

KNOWINGLY MAKING A FALSE MUSTER

SPECIFICATION

* * * knowingly make a false muster of the third division of said ship by reporting one D—— E. F——, boatswain's mate second class, as present, when the said F——, as he, the said C——, then well knew, was not present, but was absent without leave.

71. Waste of public property.—This is provided for in the 8th A. G. N., paragraph 15.

Charges:

1. Wasting { ammunition.
provisions.
public property.
2. Having the power to { ammunition
prevent waste of { provisions
public property } knowingly
permitting it. (6)

Elements: Waste may consist in not taking proper care of the ammunition, etc., and thus allowing it to be lost or damaged; in recklessly expending in firings; giving it away, etc.

Lesser included offense: Conduct to the prejudice of good order and discipline.

Sample specification:

CHARGE

WASTING AMMUNITION

SPECIFICATION

* * * while so serving on board the U. S. S. ——, and while a member of a firing party from said ship on the target range at the naval station, ——, ——, having had one hundred twenty rounds of rifle ammunition, property of the United States, duly issued to him for use in the naval service did, on or about May 3, 19—, at the target range aforesaid, negligently waste the same by firing away the said ammunition without orders and without sufficient cause.

72. Plundering, etc., on shore.—This is provided for in the 8th A. G. N., paragraph 16.

(6) The distinction between this charge and that given in sec. 63 is in the word "power."

Charges:

1. When on shore

plundering	}	an inhabitant.
abusing		
maltreating		
2. When on shore injuring the property of an inhabitant.

A person or corporation resident or incorporated within the state or country where the act is committed is an inhabitant. If the person or corporation is not an inhabitant the offense must be laid under one of the specific charges or, if no appropriate one can be found, under scandalous conduct. In any case, the specific charge, if there be one, is to be preferred.

73. Apprehending offenders.—This is provided for in the 8th A. G. N., paragraph 17.

Charge:

Refusing	{	to use his utmost	{	detect, apprehend, and bring to punishment all offenders.
Failing		exertions to		aid a person appointed to detect, apprehend, and bring to punishment all offenders.

Elements: "Utmost exertions" is to be understood in a reasonable sense with reference to the circumstances of the particular case. A mere inadvertent neglect to take some necessary step toward detecting, etc., will not constitute the offense.

This charge is not proper against one who is himself a principal in the offense.

Lesser included offense: Conduct to the prejudice of good order and discipline.

Sample specification:

CHARGE

FAILING TO USE HIS UTMOST EXERTIONS TO DETECT, APPREHEND, AND
BRING TO PUNISHMENT ALL OFFENDERS

SPECIFICATION

* * * having, on or about June 3, 19—, witnessed certain persons by name to the relator unknown, break into and enter the store-room of the post quartermaster at said barracks, and remove therefrom certain property of the United States, and well knowing that said persons had committed therein a theft of property of the United States, did then and there fail to use his utmost exertions to detect, apprehend, and bring to punishment the perpetrators of said theft.

74. Absence without or over leave.—This is provided for in the 8th A. G. N., paragraph 19.

Charges:

1. Absence from station and duty without leave.
2. Absence from station and duty after leave had expired.

Elements: Absence from station and duty without leave is a more serious offense than absence from station and duty after leave had expired. Both offenses are unauthorized absences but the former has the additional element of unauthorized departure from station and duty. Consequently if an accused is charged with absence without leave and the proof is that he actually had proper authority to depart but did not return when due back, proper substitutions should be made in the specification to cover the actual unauthorized absence, and the accused should be found guilty in less degree than charged—guilty of absence from station and duty after leave had expired. Care must be taken that the specification as found proved in such case follows the sample specification given for the charge “Absence from station and duty after leave had expired.”

If a specification is laid under the charge “Absence from station and duty after leave had expired” and the proof is that the accused was in fact absent without leave, he should be acquitted. Accordingly, if the information in the hands of the convening authority is not clear as to whether the accused was absent without leave or after his leave had expired, the accused should be charged with the greater offense, that of absence without leave, so that in case the evidence proves guilt for the lesser offense, the court can make the proper substitution as indicated above.

No specific intent need be proved, the act supplying the intent. Where, however, a man on authorized leave is unable to get back through no fault of his own he has not committed the offense. Thus, if it is proved that his unauthorized absence was solely due to his arrest and detention by the civil authorities, which detention was followed by an acquittal in the civil court, the accused should be acquitted in the court-martial proceedings. If, however, the unauthorized absence was caused by the misconduct of the accused, as evidenced by his conviction in the civil court or in the court-martial proceedings for such misconduct or by proof of such misconduct through the introduction of evidence during his trial for absence over leave, such facts do not constitute a legal defense to the unauthorized absence. If the accused was without leave when detained by the civil authorities, he is absent without leave for the entire period. This same rule applies to illness of the accused preventing his return.

The period of absence is the period from the unauthorized departure, or from the expiration of leave, as the case may be, until return to naval authority.

Lesser included offense: For the attempt, conduct to the prejudice of good order and discipline.

Lesser included offense: (for A. W. O. L.) Absence from station and duty after leave has expired.

There is no lesser included offense for absence from station and duty after leave has expired.

Sample specifications:

CHARGE I

ABSENCE FROM STATION AND DUTY WITHOUT LEAVE

SPECIFICATION

* * * did, on or about November 1, 19—, without leave from proper authority, absent himself from his station and duty on board said ship, to which he had been regularly assigned, and did remain so absent from the U. S. naval service for a period of about seventy days, at the expiration of which he was delivered on board said receiving ship at the place aforesaid.

CHARGE II

ABSENCE FROM STATION AND DUTY AFTER LEAVE HAD EXPIRED

SPECIFICATION 1

* * *, having, while so serving on board the U. S. S. ———, been granted leave of absence from his station and duty on board said ship, to which he had been regularly assigned, said leave to expire on November 22, 19—, did fail to return to his station and duty as aforesaid upon the expiration of said leave, and did remain absent from the U. S. naval service, without leave from proper authority, for a period of about two days, at the expiration of which he was delivered to United States naval authority at ———, ———, and he, the said F———, as a result of said absence missed said ship when she sailed on November 23, 19—. (7)

SPECIFICATION 2

* * *, for a period of about twenty-four hours, at the expiration of which he surrendered himself on board the aforesaid ship.

SPECIFICATION 3

* * *, for a period of about six hours, at the expiration of which he surrendered himself at the U. S. Navy recruiting station.

(7) For deliberately missing ship, see sec. 93, sp. 4.

75. Violating general orders or regulations.—This is provided for in the 8th A. G. N., paragraph 20.

Charge:

Violation of
Refusing obedience to } a lawful { general order } issued by the Sec-
retary of the Navy.

Elements: As a practical matter "violation of" includes "refusing obedience to" and the former term should be used in the charge. A regulation or general order issued by the Secretary of the Navy is lawful that is not in conflict with the Constitution or the provisions of an act of Congress. No specific intent need be shown.

Lesser included offense: Conduct to the prejudice of good order and discipline.

Sample specifications:

CHARGE I

VIOLATION OF A LAWFUL GENERAL ORDER ISSUED BY THE SECRETARY
OF THE NAVY

SPECIFICATION 1

* * *, while so serving in command of the U. S. S. ———, having, on February 14, 19—, received a lawful general order issued by the Secretary of the Navy announcing to the U. S. Navy the death of ———, said order requiring all officers of the U. S. Navy and U. S. Marine Corps to wear the badge of mourning for a period of thirty days from and after the date of its receipt, did, on board said ship, neglect and fail to wear the badge of mourning during a period of thirty days immediately following the date of receipt of said order as aforesaid.

SPECIFICATION 2

* * *, while so serving at the U. S. naval proving ground, ———, ———, did, on or about April 27, 19—, knowingly, wilfully, and without proper authority, use intoxicating liquor for beverage purposes in an unauthorized place at the said naval proving ground, to wit, the parking area in the vicinity of the recreation hall.

SPECIFICATION 3

* * *, while so serving at the U. S. naval proving ground, ———, ———, did, on or about April 27, 19—, knowingly, wilfully, and without proper authority, have in his possession intoxicating liquor for beverage purposes in an unauthorized place at the said

naval proving ground, to wit, a Chevrolet automobile, the property of one G—— H. I——, fireman second class, U. S. Navy, parked in the vicinity of the recreation hall.

CHARGE II

VIOLATION OF A LAWFUL REGULATION ISSUED BY THE SECRETARY OF THE NAVY

SPECIFICATION 1

* * *, while so serving in command of the U. S. S. ——, having, on April 22, 19—, had referred to him by the Bureau of Navigation of the Navy Department, a copy of a letter which had been received by said bureau from Captain G—— H. I——, U. S. Navy, commandant of the naval station, ——, ——, in substance as follows: “* * *”, and having been called upon by said bureau for an explanation of the facts mentioned in the said letter of the commandant of the said naval station, did, on or about April 27, 19—, on board said ship, address a communication to the Commandant of the said naval station in tenor as follows: “* * *”; in which said letter he, the said F——, did express an opinion upon and impugn the motives of the said I—— (8).

SPECIFICATION 2

* * *, did, on or about October 16, 19—, in the city of ——, ——, knowingly, unlawfully, and without competent authority pledge to one M—— N. O——, a merchant of said city, the following articles of clothing lawfully furnished by the United States to the said L—— as a part of his, the said L——’s, prescribed uniforms and outfit, for the amounts in United States money hereinafter stated, to wit: One overcoat for two dollars (\$2.00), one flannel shirt for one dollar (\$1.00), and one pair of russet shoes for one dollar and seventy-five cents (\$1.75), which said amounts as above set forth, he, the said L——, did receive into his possession and appropriate to his own use (9).

SPECIFICATION 3

* * *, while so serving on board the U. S. receiving ship, navy yard, ——, ——, as pay clerk to one S—— T. U——, a passed

(8) This violates art. 198 of the Regulations.

(9) This violates art. 122 (2) of the Regulations.

assistant paymaster, Supply Corps, U. S. Navy, with the rank of lieutenant, supply officer of said receiving ship, having on or about April 5, 19—, discovered the fact that there was a deficiency of a sum of money of the amount of about four hundred dollars (\$400.00), in the cash on hand, said money being property of the United States intended for the naval service thereof, which the said R—— had, between December 1, 19—, and the date first aforesaid, received into his possession, custody, and control, as pay clerk as aforesaid for the said U——, for lawful disbursement, in the name of and in behalf of the said U——, and for which said sum of money the said R—— was responsible, did, on or about April 5, 19—, on board said ship, neglect and fail to report to proper authority the aforesaid deficiency (10).

SPECIFICATION 4

* * *, having charge of a detachment of enlisted men of the U. S. Marine Corps, for transfer to the U. S. S. —— at ——, ——, en route from said marine barracks to said ship, and having in his possession a suitcase containing about four quarts of alcoholic liquor, as he, the said D——, well knew, did, on or about April 25, 19—, on a train at ——, ——, wrongfully and unlawfully direct one E—— F. G——, private, U. S. Marine Corps and a member of the detachment aforesaid, to take charge of said suitcase, which said suitcase contained said alcoholic liquor, until said detachment arrived on board said ship, and he, the said G——, did, pursuant to and in accordance with said direction, take charge of and take said suitcase, containing alcoholic liquor as aforesaid, on board said ship, and he, the said D——, did, by means of said wrongful and unlawful direction, therein and thereby knowingly, wilfully, without proper authority and not for authorized medical purposes cause alcoholic liquor to be admitted on board said ship (11).

SPECIFICATION 5

* * *, knowingly, wilfully, without proper authority, and not for authorized medical purposes, have in his possession on board said ship a narcotic substance, to wit, cocaine (12).

(10) This violates art. 80 of the Regulations.

(11) This violates art. 118 of the Regulations.

(12) This violates art. 118 of the Regulations.

SPECIFICATION 6

* * *, knowingly, wilfully, without proper authority, and not for authorized medical purposes, use alcoholic liquor, to wit, gin, as a beverage on board said ship (13).

SPECIFICATION 7

* * *, at said marine barracks, knowingly, wilfully, and without proper authority, have in his possession alcoholic liquor, to wit, whisky, for drinking purposes; said marine barracks being located in a State the laws of which prohibit the possession of such alcoholic liquor for drinking purposes (14).

SPECIFICATION 8

* * *, on board said ship, address and cause to be delivered to the Secretary of the Navy and to Rear Admiral Q—— R. S——, U. S. Navy, an application for redress of wrong, bearing thereon a number of signatures of enlisted men of the U. S. Navy, and being in tenor as follows: "We, the men whose names are on this paper, are dissatisfied with the conditions on the U. S. S. ———. If conditions can not be remedied, we request to be TRANSFERRED", he, the said P——, having failed to make said application in writing through his immediate commanding officer to the commander in chief of the fleet (or squadron) to which he, the said P——, was then and there attached (or to the senior officer present, as the case may be) (15).

SPECIFICATION 9

* * *, captain, U. S. Marine Corps, while serving as a first lieutenant, U. S. Marine Corps, at the U. S. marine barracks, ———, ———, did, on or about May 5, 19—, at said barracks, wilfully; knowingly, and without proper authority, borrow from one X—— Y. Z——, then a sergeant, now a private, U. S. Marine Corps, serving at said barracks, money of the amount of about one hundred dollars (\$100.00) (16).

SPECIFICATION 10

* * *, having, on or about April 20, 19—, at said barracks, made an agreement with one W—— X. Y——, private, U. S.

(13, 14) These violate art. 118 of the Regulations.

(15) This violates art. 99 of the Regulations.

(16) This violates art. 104 of the Regulations.

Marine Corps, whereby it was agreed that he, the said V——, would loan the said Y—— a sum of about two dollars (\$2.00), and he, the said Y——, would pay the said V—— a sum of about four dollars (\$4.00), for and in consideration for said loan, did, at the time and place aforesaid, without permission from his commanding officer, pursuant to and with the intention of thereby obtaining profit in accordance with said agreement, loan the said Y—— the sum of about two dollars (\$2.00) (17).

SPECIFICATION 11

* * *, did, on or about February 28, 19—, on board said ship, it not being necessary to the proper performance of his duty, wilfully, knowingly, and without proper authority, have concealed about his person a dangerous weapon, namely, a sandbag (18).

SPECIFICATION 12

* * *, lieutenant, U. S. Navy, while so serving on board the U. S. S. A——, did, on or about June 7, 19—, in the city of ——, while talking with one I—— J. K——, ensign, U. S. Navy, serving on board the U. S. S. B——, concerning one L—— M. N——, commander, U. S. Navy, commanding the said U. S. S. B——, state to the said K——, "Captain N—— is a * * *", or words to that effect, meaning and intending thereby the said Commander N——, well knowing and intending the said language to be such as would tend to diminish the confidence in and respect due to the said Commander N——, the superior in command of the said Ensign K—— (19).

SPECIFICATION 13

* * *, on board said ship, knowingly, wilfully, and without proper authority, have in his possession wearing apparel belonging to another person in the Navy, to wit, one dress blue uniform, the property of one L—— N. M——, fireman third class, U. S. Navy (20).

SPECIFICATION 14

* * *, while so serving on board the U. S. S. ——, and while on patrol duty in the city of ——, ——, with liberty parties

(17) This violates art. 85 of the Regulations.

(18) This violates art. 119 of the Regulations.

(19) This violates art. 96 of the Regulations.

(20) This violates art. 122 of the Regulations.

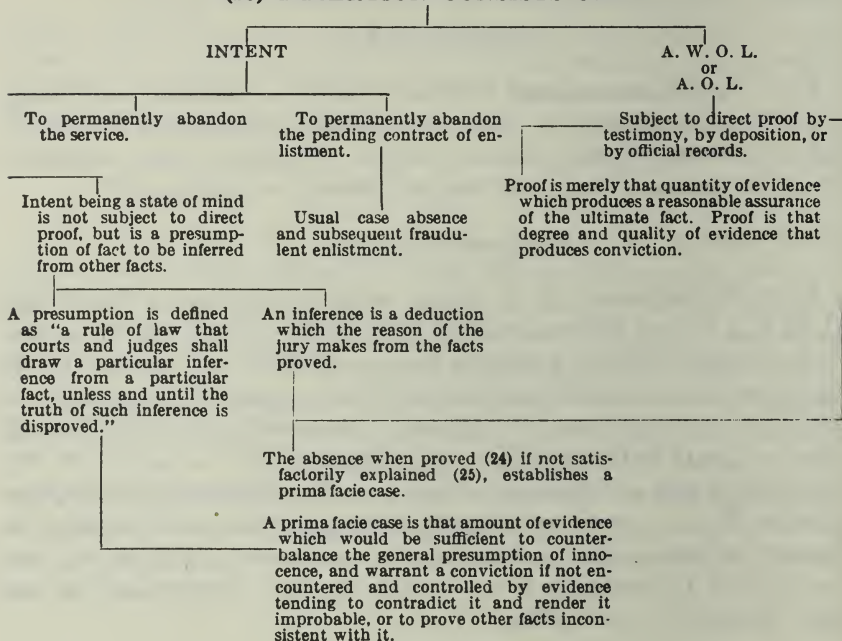
ashore, did, on or about March 14, 19—, in said city, knowingly, wilfully, and without proper authority, partake of intoxicating liquor (21).

76. Desertion in time of peace (22).—This is provided for in the 8th A. G. N., paragraph 21.

Charge: Desertion.

Elements:

(23) DESERTION CONSISTS OF—



The desertion must be alleged to be from the naval service and not merely to be from a certain ship or station.

One involuntarily driven by fear to leave his station is not guilty.

Lesser included offenses: Absence without or over leave. Conduct to the prejudice of good order and discipline.

(21) This violates art. 698 (4) of the Regulations.

(22) For desertion in time of war, see sec. 49.

(23) The definitions given are from Words and Phrases Judicially Defined, except where otherwise noted.

(24) The duration of the absence must be proved for the court to infer from it the intent of the accused permanently to abandon the service.

(25) A statement of the accused is not evidence.

Sample specifications:

CHARGE

DESERTION

SPECIFICATION 1

* * * while so serving on board the U. S. S. ———, did, on or about October 15, 19—, desert from said ship and from the U. S. naval service, and did remain a deserter until he was delivered on board said ship, on or about October 18, 19—.

SPECIFICATION 2

* * *, while so serving at the U. S. marine barracks, navy yard, ———, ———, did, on or about March 20, 19—, desert from said barracks and from the U. S. naval service, and did remain a deserter until he surrendered himself at the U. S. marine barracks, navy yard, ———, ———, on or about August 20, 19—.

SPECIFICATION 3

In that G——— H. I———, ship's cook third class, alias J——— K. L———, ship's cook third class, U. S. Navy, while serving under the name and rate of G——— H. I———, ship's cook third class, U. S. Navy, did, on or about December 9, 19—, desert from the U. S. naval training station ———, ———, and from the U. S. naval service, and did remain a deserter until he enlisted on or about May 11, 19—, at the U. S. Navy recruiting station, ———, ———, under the name and rate of J——— K. L———, ship's cook third class, U. S. Navy.

SPECIFICATION 4

* * * and did remain a deserter until his enlistment had expired on or about July 13, 19—, after which he was delivered at the U. S. Navy recruiting station, ———, ———, on or about September 20, 19— (26).

SPECIFICATION 5

* * *, while so serving on board the U. S. S. ———, and while en route, pursuant to lawful orders, from the U. S. receiving ship, ———, ———, to the U. S. S. ———, did, on or about May 24, 19—, desert from the said U. S. S. ——— and from the U. S. naval service, and did remain a deserter until he was apprehended by a U. S. naval guard at ———, ———, on or about November 16, 19—.

(26) To be used in cases of desertion where surrender, apprehension, or delivery occurs after expiration of enlistment.

77. Attempting to desert (27).—This is provided for in the 8th A. G. N., paragraph 21.

Charge: Attempting to desert.

Elements: To constitute an attempt to desert specific intent must be proved.

Lesser included offense: Conduct to the prejudice of good order and discipline.

Sample specification:

CHARGE

ATTEMPTING TO DESERT

SPECIFICATION

* * * while so serving on board the U. S. S. ———, did, on or about October 18, 19—, endeavor to leave said ship by attempting to jump overboard therefrom with intent to desert from the aforesaid ship and from the U. S. naval service.

78. Aiding desertion.—This is provided for in the 8th A. G. N., paragraph 21.

Charge: Aiding and enticing another to desert.

Elements: Whereas by paragraph 6 of article 4 of the articles for the government of the Navy, enticing desertion alone is an offense in time of war, in time of peace, by this article, there must be both an aiding and an enticing. If either of these elements is lacking the offense should be laid under the general charge.

Lesser included offense: Conduct to the prejudice of good order and discipline.

Sample specification:

CHARGE

AIDING AND ENTICING ANOTHER TO DESERT

SPECIFICATION

* * * while so serving on board the U. S. S. ———, did, on or about January 19, 19—, on board said ship, in order to persuade one D—— E. F——, seaman second class, U. S. Navy, to join him, the said C——, in an attempt to desert from said ship and from the U. S. naval service, offer the said F—— the sum of ten dollars (\$10.00), lawful money of the United States, and did, then and there, assist the said F—— in deserting from the ship aforesaid, and from the U. S. naval service, by arranging for and causing

(27) This charge is authorized only when the act is committed in time of peace.

the appearance, at about 11:00 p. m., on said date, of a small shore boat under gunport number six of said ship, in which boat the said F——, without permission from lawful authority, took passage ashore with the intention of thereby then and there deserting from said ship and from the U. S. naval service.

79. Absence from command.—This is provided for in the 9th A. G. N.

Charge: Absence from command without leave.

Elements: This offense may be committed only by a commissioned or warrant officer who is also commanding officer. The other elements of the offense are as set forth in section 74. A peculiarity of this offense is that an officer convicted thereof may be sentenced to be reduced to the rating of seaman second class.

Lesser included offenses: Absence without or over leave; conduct to the prejudice of good order and discipline.

Sample specification:

CHARGE

ABSENCE FROM COMMAND WITHOUT LEAVE

SPECIFICATION

* * *, while so serving in command of the U. S. S. ———, did, on or about March 15, 19—, absent himself from said command without leave from proper authority, and did remain so absent for a period of about three days.

80. Crimes of fraud against the United States.—These are provided for in the 14th A. G. N., and are separately considered in the following sections. It should be noted that the punishment authorized is "fine and imprisonment, or such other punishment as a court martial may adjudge", in the alternative. It follows that it might be illegal to adjudge a sentence, for example, of imprisonment and dismissal for a violation of this article. This contention was made in *Carter v. McClaghry*, 183 U. S. 365, but as Carter had been charged under the general charge in addition it was not sustained by the court. Consequently, as an act in violation of this article will also be an act prejudicial to good order and discipline, it should be laid under both charges in order that an offender may, if the facts warrant, be imprisoned and the service rid of him. Such a duplication of charges is not in fact trying the accused twice for the same offense, as the offenses are distinct, the one being a fraud on the Government, the other an act tending to disrupt the administration of the Navy.

The liability of a person in the service to trial by court-martial for an offense against this article does not terminate with his discharge or dismissal. However, in such a case the person can be tried only

for the offense against this article and not under the general charge, but as the person is already out of the service the necessity for using the general charge in addition has ceased. Of course, in such a case it is improper to adjudge a discharge or dismissal as part of the sentence, as the person being already out of the service cannot be dismissed or discharged.

81. Presenting false claims (28).—This is provided for in the 14th A. G. N., paragraph 1.

Charge:

Presenting
Causing to be presented } to a person in the { civil
 } military } service of
 } naval }
the United States for { approval } a claim against { the United States
 } payment } an officer of the {
 } } United States }
knowing said claim to be { false.
 } fraudulent.

Elements: The claim must be presented or caused to be presented with knowledge of its fictitious or dishonest character.

Such claims include not only those containing some material false statement, but also claims that the person presenting knows to have been paid, or for some other reason knows he is not authorized to present or receive money on.

Presenting to a paymaster a false final statement, knowing it to be false, is one example of an offense under this paragraph. Another instance of presenting a false claim would be where an officer having a claim respecting property lost in the service knowingly includes articles that were not in fact lost and submits such claim to his commanding officer for action.

Lesser included offenses: See section 91.

Sample specification:

CHARGE

CAUSING TO BE PRESENTED TO A PERSON IN THE NAVAL SERVICE OF THE UNITED STATES FOR PAYMENT A CLAIM AGAINST THE UNITED STATES KNOWING SAID CLAIM TO BE FALSE

SPECIFICATION

* * * , while so serving as the head of the department of _____, at the U. S. navy yard, _____, _____, and it being part of his duty as such head of department to supervise and control all work

(28) See sec. 91 for definition of a claim.

pertaining to said department and to have general superintendence, charge, and direction of all persons employed in said department, and it being also a part of his duty to direct the preparation of and to examine, and, if found correct, to approve, the pay rolls of said department prior to their submission to the commandant of said navy yard for approval and transmission to the supply officer at said navy yard, and having caused to be prepared a semimonthly pay roll of persons employed in said department of ———, for the period from March 16, 19—, to March 31, 19—, inclusive, did, on or about April 10, 19—, at said navy yard, in his official capacity as head of said department, approve said pay roll and cause it to be presented to and approved by the commandant and transmitted to the supply officer of the said navy yard, whereas, as he, the said C——, well knew, the said pay roll contained the names of a number of laborers and mechanics, to wit, four hundred and forty-nine, who, for work performed during the last six days of March between 7:00 a. m., and meridian, and between 12:30 p. m., and 6:30 p. m., were credited, in making up the time and amounts specified on said pay roll, with having rendered one and five-eighths days, that is to say, thirteen hours' service each, when, in fact, they had thus rendered and were entitled to be credited with one and three-eighths days, that is to say, only eleven hour's service each per day, in consequence of which false entries on said pay roll, and in accordance with the amounts set forth on said pay roll, overpayments to laborers and mechanics employed in the department of ——— at said navy yard whose names appeared on said pay roll for the period named were made, amounting to about one thousand four hundred twenty-nine dollars and thirty-three cents (\$1,429.33); and the said C—— did then and there, therein and thereby, cause to be presented to a person in the naval service for payment, a claim against the United States, knowing said claim to be false and fraudulent.

82. Agreement concerning false claims.—This is provided for in the 14th A. G. N., paragraph 2.

Charge:

Entering into {an agreement
a conspiracy} to defraud the United States by
{obtaining
aiding another to obtain} the {allowance
payment} of a {false
fraudulent} claim.

Elements: A conspiracy is the corrupt agreeing together of two or more persons to do by concerted action something unlawful as a means or an end. The mere entry into a corrupt agreement for the

purpose of defrauding the United States by any of the means specified constitutes the offense.

Lesser included offenses: See section 91.

Sample specification:

CHARGE

ENTERING INTO A CONSPIRACY TO DEFRAUD THE UNITED STATES BY
AIDING ANOTHER TO OBTAIN THE PAYMENT OF A FALSE CLAIM

SPECIFICATION

* * * paymaster, Supply Corps, U. S. Navy, with the rank of lieutenant commander, while so serving at the U. S. navy yard, ———, ———, did, on or about January 12, 19—, at said navy yard, enter into a conspiracy with one D——— E. F———, a civilian of ———, ———, to defraud the United States by agreeing to obtain the payment of a false claim against the United States in the amount of thirty-three thousand dollars (\$33,000.00), for supplies alleged to have been furnished to the United States by the said F———, which claim was false in that it stated that the amount of supplies furnished was * * *, of the total value of thirty-three thousand dollars (\$33,000.00), whereas in truth and in fact the amount of supplies furnished was * * *, of the total value of thirty thousand dollars (\$30,000.00), as he, the said C———, well knew.

83. False papers.—This is provided for in the 14th A. G. N., paragraph 3.

Charge:

Making	}	{	writing	}	knowing the same to con-		
Using							
Procuring {the making of						}	paper
Advising {the using of							
tain a {false fraudulent }					obtaining aiding another to obtain		
the {approval allowance payment }					of a claim against {the United States. an officer of the United States.		

Elements: It is not necessary to the offense of making a writing knowing it to contain false or fraudulent statements that such writing be used or attempted to be used or that the claim in support of which it was made be presented for approval, allowance, or payment. The false or fraudulent statement should, however, be material.

In the offense of procuring the making or use of the writing or other paper, the paper must be made or used; but in the offense of advising such acts the making or use of the paper is not necessary.

Lesser included offenses: See section 91.

Sample specification:

CHARGE

MAKING A WRITING KNOWING THE SAME TO CONTAIN A FALSE STATEMENT FOR THE PURPOSE OF AIDING ANOTHER TO OBTAIN THE APPROVAL OF A CLAIM AGAINST THE UNITED STATES

SPECIFICATION

* * *, while so serving in command of the U. S. marine barracks, navy yard, ———, having on October 31, 19—, made a requisition on one D—— E. F——, colonel, assistant quartermaster, U. S. Marine Corps, in tenor as follows: “* * *”, and the said assistant quartermaster of the Marine Corps, on November 3, 19—, the public exigency requiring the immediate delivery of the articles enumerated in said requisition, having ordered that they be procured by open purchase, and the said C—— having purchased said articles from ———, ———, did, on or about November 15, 19—, at said barracks, for the purpose of obtaining the approval and payment to said firm of its claim against the United States for said articles, prepare and forward to said assistant quartermaster, U. S. Marine Corps, an open purchase voucher, in tenor as follows: “* * *”, the said C—— well knowing that the articles enumerated in said voucher were not inspected and received by him at the navy yard, ———, ———, and that the certificates on said voucher made and signed by him that the said articles were so inspected and received were false.

84. False oath.—This is provided for in the 14th A. G. N., paragraph 4.

Charge:

Making	} an oath to a {	fact	} knowing such
Procuring the making of		writing	
Advising the making of		paper	

oath to be false, for the purpose of {

the {	approval	} of a claim against {	the United States.	
			allowance	an officer of the United States.
			payment	

The elements of this offense are set forth in sections 87 and 91.

Lesser included offenses: See section 91.

Sample specification:

CHARGE

MAKING AN OATH TO A PAPER, KNOWING SUCH OATH TO BE FALSE, FOR THE PURPOSE OF OBTAINING THE APPROVAL OF A CLAIM AGAINST THE UNITED STATES

SPECIFICATION

* * * having on January 8, 19—, made a certain paper purporting to set forth a list of the personal effects of him, the said C——, lost in the wreck of the U. S. S. ——, in tenor as follows: “* * *”, did, on or about January 12, 19—, on board said ship, before one D—— E. F——, captain, U. S. Navy, commanding said ship, and an officer duly authorized to administer oaths, make an oath that said paper contained a true list of the effects which he, the said C——, had lost in the wreck of the U. S. S. ——, which said oath was false in that the following articles, to wit, * * *, contained in said list had not been lost by him, the said C——, in the wreck of the U. S. S. ——, as he, the said C——, then and there well knew.

85. Forgery of a claim.—This is provided for in the 14th A. G. N., paragraph 5.

Charges:

1.

{ Forging Counterfeiting Procuring { the forging of Advising { the counterfeiting of	}	a signature upon a { writing paper
---	---	---------------------------------------

for the purpose of { obtaining
aiding another to obtain } the { approval
allowance } of a
payment }
claim against { the United States.
an officer of the United States.

2.

{ Using Procuring the use of Advising the use of	}	a { forged counterfeited } signature, knowing the
--	---	--

same to be { forged
counterfeited } for the purpose of { obtaining
aiding another } the
to obtain }
approval }
allowance } of a claim against { the United States.
payment } an officer of the United States.

Elements: For the elements of forgery see section 102. The term “forges or counterfeits” includes any fraudulent making of another’s

signature, whether an attempt is made to imitate the handwriting or not.

Lesser included offenses: See section 91.

Sample specification:

CHARGE

USING A FORGED SIGNATURE, KNOWING THE SAME TO BE FORGED, FOR THE PURPOSE OF OBTAINING PAYMENT OF A CLAIM AGAINST THE UNITED STATES

SPECIFICATION

* * *, passed assistant paymaster, Supply Corps, U. S. Navy, with the rank of lieutenant, while so serving on board the U. S. S. ———, having, on or about January 15, 19—, received through the commanding officer of said ship a certificate for the sum of sixty dollars (\$60.00), in payment of an indemnity for loss of clothing, issued by the General Accounting Office in favor of one D—— E. F——, seaman first class, U. S. Navy, serving in said ship, and he, the said C——, well knowing that the said F—— was, at the time of the receipt by him, the said C——, of said certificate, a deserter from the U. S. naval service, did, nevertheless, for the purpose of claiming and thereby obtaining allowance in his accounts of a sum of sixty dollars (\$60.00) by the said General Accounting Office, then and there, present, among his official vouchers, the aforesaid certificate, bearing thereon what purported to be the signature of the said F——, he, the said C——, well knowing that the said signature was a forgery.

86. Delivering less property than receipted for.—This is provided for in the 14th A. G. N., paragraph 6.

Charge:

Having $\left\{ \begin{array}{l} \text{charge} \\ \text{possession} \\ \text{custody} \\ \text{control} \end{array} \right\}$ of $\left\{ \begin{array}{l} \text{money} \\ \text{property} \end{array} \right\}$ of the United States $\left\{ \begin{array}{l} \text{furnished} \\ \text{intended} \end{array} \right\}$

for the naval service thereof, knowingly $\left\{ \begin{array}{l} \text{delivering} \\ \text{causing to be delivered} \end{array} \right\}$ to a person having authority to receive the same, an amount thereof less than that for which he received a $\left\{ \begin{array}{l} \text{certificate.} \\ \text{receipt.} \end{array} \right\}$

Elements: It is immaterial in this offense by what means, whether by deceit, collusion, or otherwise, the accused effected the transaction, or what his purpose was in so doing.

Lesser included offenses: See section 91.

Sample specification:

CHARGE

HAVING CUSTODY OF PROPERTY OF THE UNITED STATES, FURNISHED FOR THE NAVAL SERVICE THEREOF, KNOWINGLY DELIVERING TO A PERSON HAVING AUTHORITY TO RECEIVE THE SAME, AN AMOUNT THEREOF LESS THAN THAT FOR WHICH HE RECEIVED A RECEIPT

SPECIFICATION

* * *, storekeeper second class, U. S. Navy, while so serving on board the U. S. S. ———, having custody of property of the United States, furnished for the naval service thereof, did, on or about January 12, 19—, on board said ship, knowingly deliver to one D—— E. F——, torpedoman first class, U. S. Navy, the said F—— having authority to receive the same, an amount of alcohol which as he, the said C—— well knew, was two gallons less than the amount for which he received a receipt.

87. Giving receipts without knowing their truth.—This is provided for in the 14th A. G. N., paragraph 7.

Charge:

Being authorized to {make
deliver} a paper certifying the receipt of {money
property} of the United States {intended
furnished} for the naval service thereof, {making
delivering} such writing without full knowledge of the statements therein contained, and with intent to defraud the United States.

Elements: This paragraph makes it the imperative duty of an officer or man signing a receipt to have full knowledge that all amounts called for therein have in fact been furnished. Signing without such knowledge makes the signer guilty of a violation of this article. If, in fact, the receipt is false, signing without full knowledge will be *prima facie* evidence of an intent to defraud.

Lesser included offenses: See section 91.

Sample specification:

CHARGE

BEING AUTHORIZED TO MAKE A PAPER CERTIFYING THE RECEIPT OF PROPERTY OF THE UNITED STATES INTENDED FOR THE NAVAL SERVICE THEREOF, MAKING SUCH WRITING WITHOUT FULL KNOWLEDGE OF THE STATEMENTS THEREIN CONTAINED, AND WITH INTENT TO DEFRAUD THE UNITED STATES

SPECIFICATION

* * *, commissary steward, U. S. Navy, while so serving on board the U. S. S. ———, being authorized to make a paper certifying the receipt of property of the United States intended for the naval service thereof, did, on or about June 3, 19—, on board said ship, make a writing in tenor as follows: “* * *”, without having full knowledge of the truth of the statements therein contained and with intent to defraud the United States.

88. Stealing military property of the United States.—This is provided for in the 14th A. G. N., paragraph 8.

Charge:

Stealing	{	ordnance	}	of the United States				
		arms						
		equipment						
		ammunition						
		clothing						
		subsistence stores						
		money						
furnished intended	{	property	}	for the {	{	military	}	service thereof.
		naval						

Elements: The elements of “theft” are set forth in section 58.

Post exchange funds, and money appropriated for other than the military or naval service, as postal funds, do not come within the description.

Lesser included offenses: See section 91.

Sample specifications:

CHARGE

STEALING PROPERTY OF THE UNITED STATES INTENDED FOR THE
NAVAL SERVICE THEREOF

SPECIFICATION 1

In that, A—— B. C—— and D—— E. F——, privates, U. S. Marine Corps, while so serving at the U. S. marine barracks, navy yard, ———, ———, did, each and together, on or about January 26, 19—, feloniously take, steal, and carry away from the possession of the United States, to wit, from the copper pile in the vicinity of the foundry at said navy yard, a pig of lead weighing one hundred and ninety-three pounds, more or less, of the value of about nine dollars and sixteen cents (\$9.16), the property of the United States intended for the naval service thereof, and they, the said C—— and F——, did then and there appropriate the same to their own use.

SPECIFICATION 2

* * *, assistant naval constructor, Construction Corps, U. S. Navy, with the rank of lieutenant (junior grade), while so serving at the U. S. navy yard, ———, ———, D——— E. F——— and G——— H. I———, civilian employees in the paint shop at said navy yard, and J——— K. L———, civilian employee in the transportation department at said navy yard, did, each and together, on or about January 6, 19—, feloniously take, steal, and carry away from the possession of the United States, to wit, from the paint shop at said navy yard, about two hundred gallons of alcohol, of the total value of about two hundred dollars (\$200.00), and four gasoline drums, of the capacity of about fifty gallons each, of the total value of about sixty dollars (\$60.00), the property of the United States intended for the naval service thereof, and they, the said ———, F———, I———, and L———, did then and there appropriate the same to their own use.

89. Embezzling military property of the United States.—This is provided for in the 14th A. G. N., paragraph 8.

Charge:

Embezzling	{	ordnance	}	of the United States {furnished intended }
		arms		
		equipment		
		ammunition		
		clothing		
		subsistence stores		
		money		
		property		

for the {military
naval } service thereof.

Elements: Embezzlement is closely allied to larceny. It is not a common law offense, and is not defined for general purposes in the Federal Penal Code. It has been defined by Federal courts in construing Federal statutes. In *United States v. Harper*, 33 Fed. 474, the court said:

"The word 'embezzle' as used in this count of the indictment and in the statute is a word having a technical meaning * * *. It is especially applicable to the unlawful conversion of property by clerks, agents, and servants acting in fiduciary or trust capacities * * *. It involves two general ingredients or elements—first, a breach of trust or duty in respect to the moneys, properties, and effects in the party's possession, belonging to another; and secondly, the wrongful appropriation thereof to his own use."

Embezzlement differs from larceny in that it is a wrongful appropriation or conversion of property where the original taking was

lawful, or with the consent of the owner, while in larceny the taking involves a trespass, and a felonious intent must exist at the time of such taking.

Congress has designated particular acts as embezzlement, those most likely to occur in the service being given in sections 86 to 91 of the Federal Criminal Code (18 U. S. Code 172-177). (29)

It is of the utmost importance that embezzlement be not charged under theft, as the offenses are distinct, and the one does not include the other. In case of doubt it is safe to lay the offense under both charges.

Care must be observed in charging this offense that the property is of the United States and intended for the military or naval service. Post exchange funds, for example, are not such property.

Lesser included offenses: See section 91.

Sample specifications:

CHARGE I

EMBEZZLING MONEY OF THE UNITED STATES INTENDED FOR THE NAVAL SERVICE THEREOF

SPECIFICATION 1

* * *, assistant paymaster, Supply Corps, U. S. Navy, with the rank of lieutenant (junior grade), while so serving as member and delivery officer of the Board of Survey, Appraisal, and Sale, ——— naval district at the U. S. navy yard, ———, ———, having received into his possession and under his control in the execution and under color of his office as aforesaid, a sum of about three thousand eighty-seven dollars and twenty cents (\$3,087.20), in lawful money of the United States, which he, the said C——, well knew to be the property of the United States intended for the naval service thereof, said money being the proceeds of a sale of scrap steel by the said board to the ——— ——— Company of ———, ———, did, on or about August 21, 19—, at said navy yard, feloniously embezzle and convert to his own use part of said money, to wit, about eight hundred forty-six dollars and forty cents (\$846.40), the property of the United States intended for the naval service thereof, received into his possession and under his control as aforesaid.

(29) These are given in the Naval Digest, 1916, p. 203 et seq.

SPECIFICATION 2

* * *, intended for the naval service thereof, to be used by him, the said F——, for the purpose of paying for subsistence and car fare for himself and a draft of enlisted men of the U. S. Navy, in charge of him, the said F——, between said receiving station and the U. S. naval training station, ——, ——, did, on or about November 6, 19—, at said receiving station, feloniously embezzle and convert to his own use said money, property of the United States * * *.

SPECIFICATION 3

* * *, intended for the naval service thereof, did, on or about May 16, 19—, and at various and sundry times thereafter, exact days to the relator unknown, until about June 30, 19—, on board said ship, feloniously embezzle and convert to his own use various and sundry sums of said money, exact amounts to the relator unknown, amounting in all to about ten thousand eighty-five dollars and sixty-nine cents (\$10,085.69), property of the United States * * *.

SPECIFICATION 4

* * *, as supply officer of said ship, having, during the period from October 1, 19—, to March 12, 19—, received into his possession and under his control in the execution and under color of his office as aforesaid, a sum of public money of about three hundred twenty-nine dollars and seventy cents (\$329.70), property of the United States intended for the naval service thereof, with the accounting for and disbursement of which he, the said L——, was charged, did fail to render his accounts for the same as provided by law, in that he did during said period and during a period of twenty days thereafter, on board said ship, without authority, fail and has ever since failed to render his accounts for said sum of money received into his possession and under his control as aforesaid, which said public money he was not authorized to retain, either in whole or in part, as salary, pay, or emolument, and he, the said L——, did, therein and thereby, then and there embezzle the said sum of money.

CHARGE II

EMBEZZLING AMMUNITION OF THE UNITED STATES INTENDED FOR THE
NAVAL SERVICE THEREOF

SPECIFICATION

* * *, assistant quartermaster, U. S. Marine Corps, with the rank of captain, while so serving as post quartermaster at the U. S. Marine Corps base, naval operating base, ———, ———, having received into his possession and under his control in the execution and under color of his office as aforesaid, fifty-four cases of Mark II thirty caliber rifle ammunition, of the total value of about one thousand nine hundred eleven dollars and sixty cents (\$1,911.60), which he, the said C——, well knew to be the property of the United States intended for the naval service thereof, did, on or about August 21, 19—, at said Marine Corps base, feloniously embezzle and convert to his own use said ammunition, of the quantity and value aforesaid, property of the United States intended for the naval service thereof, received into his possession and under his control as aforesaid.

90. Misappropriating military property of the United States.—This is provided for in the 14th A. G. N., paragraph 8.

Charge:

Knowingly and wilfully {misappropriating
applying to his own {use
benefit}}

Wrongfully and knowingly {selling
disposing of }

ordnance	}	of the United States	{furnished intended}	}for
arms				
equipment				
ammunition				
clothing				
subsistence stores				
money				
property	}			
the { military naval }				
service thereof.				

Elements: Misappropriating is assuming to one's self or assigning to another the ownership of the property, where the same is not entrusted to the party in a fiduciary capacity and the act is therefore not an embezzlement. Applying to his own use is distinguishable in that it is an appropriation not of the ownership of the property

but of its use; and, to constitute the offense, this misapplication must be for the personal use or benefit of the offender. The more general offense of "wrongfully and knowingly disposing of" should be favored.

Lesser included offenses.—See section 91.

Sample specifications:

CHARGE I

KNOWINGLY AND WILFULLY APPLYING TO HIS OWN USE PROPERTY OF THE UNITED STATES INTENDED FOR THE NAVAL SERVICE THEREOF

SPECIFICATION 1

* * *, while so serving at the U. S. naval training station, ———, ———, did, on or about September 5, 19—, wilfully, knowingly, and without proper authority apply to his own use a whaleboat, the property of the United States intended for the naval service thereof, by taking said whaleboat from a dock at the said naval training station and using the same for the purpose of carrying himself from the said dock at the said naval training station to the city of ———, ———.

SPECIFICATION 2

* * *, the property of the United States intended for the naval service thereof, by driving said automobile from said navy yard, and did damage said automobile to the extent of about one hundred eleven dollars (\$111.00).

CHARGE II

WRONGFULLY AND KNOWINGLY DISPOSING OF PROPERTY OF THE UNITED STATES INTENDED FOR THE NAVAL SERVICE THEREOF

SPECIFICATION

* * *, did, on or about March 15, 19—, in the city of ———, ———, wrongfully, knowingly, and without proper authority dispose of one automatic forty-five caliber pistol of the value of about fifteen dollars and seventy-two cents (\$15.72), property of the United States intended for the naval service thereof, to one D—— E. F——, a civilian, of said city.

91. Other frauds against the United States.—These are provided for in the 14th A. G. N., paragraph 10.

Charge:

Executing

Attempting

Countenancing

} a fraud in violation of article 14 of the Articles

for the Government of the Navy.

Elements: The fraud must be against the United States, else it should be charged under the 8th A. G. N. (30). The acts that may be laid under this charge are acts like those specified in the preceding paragraphs of article 14. This paragraph also provides for attempting or countenancing such fraud, and thus is a lesser included offense in each of the preceding charges under this article.

It is to be noted that the first five paragraphs of article 14 have to do with various frauds in connection with claims against the United States. If the same kinds of fraud are executed, attempted, or countenanced against the United States but not in connection with claims, the act must be laid under this charge. A claim is a demand for money or property to which a right is asserted against the Government based upon the Government's own liability to the claimant (31).

A Government check is not a claim against the United States, (32), nor are such things as subsistence vouchers, travel orders, etc., until there has followed a withholding of the money or thing called for therein.

Lesser included offenses: "Attempting" or "countenancing" under the charge of "executing."

Sample specifications:

CHARGE I**EXECUTING A FRAUD IN VIOLATION OF ARTICLE 14 OF THE ARTICLES
FOR THE GOVERNMENT OF THE NAVY****SPECIFICATION 1**

* * *, while so serving on board the U. S. receiving ship, navy yard, ———, ———, did, on or about September 16, 19—, on board said ship, wilfully, falsely, and with intent to deceive for the purpose of thereby defrauding the United States, present and cause to be presented to the supply officer of said ship a false subsistence voucher, dated September 16, 19—, made out to the "Supply Officer, Receiving Ship at New York", falsely representing on the face thereof in effect that "A——— B. C———", the same being the said C———, was entitled to receive from the said supply officer

(80) Sec. 57.

(31) *U. S. v. Cohn*, 270 U. S. 345.

(32) C. M. O. 1, 1920.

a sum of about one hundred six dollars (\$106.00), property of the United States, for subsistence during the period from July 25, 19—, to September 15, 19—, and bearing on the face thereof a signature "D—— E. F——" as the officer certifying the said voucher to be true and correct and the said C—— to be entitled to receive the said sum of money of the amount and value aforesaid, and he, the said C——, well knowing that the said voucher and said representation thereon were false and that he was not entitled to receive the said sum of money or any part thereof, and that the said signature of "D—— E. F——" was false, forged, and counterfeit, did, by means of said false voucher and said false representation thereon and said forgery thereon, presented as aforesaid, then and there deceive and fraudulently obtain from the said supply officer a sum of about one hundred six dollars (\$106.00), in lawful money of the United States, the property of the United States, intended for the naval service thereof, and did then and there appropriate the same to his own use.

SPECIFICATION 2

* * *, having, without authority and with intent to defraud, forged the name "S——T. U——", the same being S——T. U——, then a gunner, U. S. Navy, upon a clothing and small stores memorandum requisition made out to "V——W. X——" and having without authority and with intent to defraud, forged the name of "V——W. X——", the same being V——W. X——, electrician's mate third class, U. S. Navy, upon a clothing and small stores receipt, and having, with the intention thereby to deceive, presented the said requisition, bearing thereon the said forgery "V—— W. X——", at the small stores issuing room on board said receiving ship, did, on or about November 14, 19—, on board said receiving ship, falsely represent himself at the said small stores issuing room to be the said X——, and by means of the said requisition and said forgery thereon, presented as aforesaid, and the said false representation, did deceive and did fraudulently obtain from the said small stores issuing room, two pairs of shoes of the total value of about thirteen dollars (\$13.00), six pairs of socks of the total value of about one dollar and fifty cents (\$1.50), two under shirts of the total value of about ninety cents (\$.90), and six handkerchiefs of the total value of about sixty cents (\$.60), said stores of the quantities and values aforesaid being the property of the United States intended for the naval service thereof, and did then and there appropriate the same to his own use.

SPECIFICATION 3

* * *, did on or about June 4, 19—, at said station, wilfully, falsely, and with intent to deceive for the purpose of thereby defrauding the United States, present and cause to be presented to the office of the disbursing officer of said station, a false pay receipt numbered nine hundred twelve, dated "June 4, 19—", for the sum of eighty dollars (\$80.00), and bearing on the face thereof a forged signature, "E———F. G——— Sea2c, U. S. N.", as the person entitled to receive the said sum of money, and he, the said D——, well knowing that the said pay receipt was false and that the said signature "E———F. G——— Sea2c, U. S. N.", was false, forged and counterfeit, did, by means of said false pay receipt, bearing thereon the said forgery, presented as aforesaid, deceive and fraudulently obtain from the said disbursing officer the sum of eighty dollars (\$80.00), in lawful money of the United States, property of the United States intended for the naval service thereof, and did then and there appropriate the same to his own use.

CHARGE II

ATTEMPTING A FRAUD IN VIOLATION OF ARTICLE 14 OF THE ARTICLES
FOR THE GOVERNMENT OF THE NAVY

SPECIFICATION 1

* * * while a member of the U. S. Naval Reserve not in active service and while wearing the uniform of his rank, did, on or about December 2, 19—, at the U. S. navy yard, ———, ———, wilfully, falsely, and corruptly, and with intent to deceive for the purpose of thereby defrauding the United States, present to the disbursing officer at said navy yard false telegraphic orders falsely purporting to be orders from the Secretary of the Navy and bearing on the face thereof a false representation to the effect that he, the said I——, was by said orders discharged from the U. S. Naval Reserve, reappointed an acting pay clerk in the U. S. Navy, and ordered to execute acceptance and oath of office as same, and that, as such acting pay clerk, he was ordered to proceed to Cavite, Philippine Islands, by way of San Francisco, California, and to report to the commander in chief, U. S. Asiatic Fleet, for duty, and the said I—— did further present in the manner aforesaid to the said disbursing officer a paper falsely purporting on the face thereof to be a copy of his acceptance and oath of office as said acting pay clerk, and did further sign and present in the manner aforesaid to the said

disbursing officer a public bill (advance pay) form, and a copy thereof, dated December 2, 19—, made out to "Acting Pay Clerk G—— H. I——", which said public bill (advance pay) form, in effect falsely certified and falsely represented that he, the said I——, was entitled to receive from the said disbursing officer the sum of three hundred thirty-three dollars and thirty-three cents (\$333.33), property of the United States, for two months' advance of pay as pay clerk, U. S. Navy, under orders dated November 30, 19—, and he, the said I——, well knowing that the said representation on the said false telegraphic orders was false, and well knowing that the said copy of his acceptance and oath of office was false, and well knowing that the said certification on the said public bill (advance pay) form was false, did by means of the said false orders and said false representation thereon, and said public bill (advance pay) form and said false certification thereon, attempt to defraud the United States of a sum of money of about three hundred thirty-three dollars and thirty-three cents (\$333.33), intended for the naval service thereof; the United States then being in a state of war.

SPECIFICATION 2

* * *, having the duty of preparing the pay rolls of the enlisted men attached to the U. S. S. ———, did, on or about August 3, 19—, at said supply office, without authority, wilfully, falsely, and with intent to deceive for the purpose of thereby defrauding the United States, alter the pay accounts of one M—— N. O——, chief quartermaster, U. S. Navy, so as to show the said O—— as being entitled to receive from the United States a sum of money of one hundred dollars (\$100.00), which sum of money, he, the said L——, well knew to be in excess of and greater than the amount of money to which the said O—— was in truth and in fact lawfully entitled, and he, the said L——, did then and there, by means of said pay account, altered as aforesaid, attempt to defraud the United States of a sum of money of one hundred dollars (\$100.00), property of the United States, intended for the naval service thereof.

92. Affray or disorder, riot, rout, and unlawful assembly.—This is provided for under the 22nd A. G. N.

Charges:

1. Riot.
2. Affray.
3. Disorder.
4. Rout.
5. Unlawful assembly.

Elements: An affray is the fighting of two or more persons, by mutual consent or otherwise, in a public place, to the terror of the people. A disorder is any conduct of such a character that it disturbs and annoys the peace and quiet of the community. Instances are, loud crying out or singing or other noisy conduct, swearing or cursing, indecent exposure of the person, etc.

An unlawful assembly is an assembly of three or more persons with intent to commit a crime by open force, or with intent to carry out any common purpose, lawful or unlawful, in such a manner as to give firm and courageous persons reasonable grounds to apprehend a breach of the peace.

A riot is an unlawful assembly which has actually begun to execute the purpose for which it assembled, by a breach of the peace, and to the terror of the public; or a lawful assembly may become a riot if the persons assembled form and proceed to execute an unlawful purpose to the terror of the public, although they had not that purpose when they assembled.

A rout is an unlawful assembly which has made a motion towards the execution of the common purpose of the persons assembled.

Lesser included offense: Conduct to the prejudice of good order and discipline.

Sample Specifications:

CHARGE I

RIOT

SPECIFICATION

* * *, together with two or more persons, names to the relator unknown, did, on or about June 29, 19—, in Fairmont Park, in ———, ———, wilfully and without justifiable cause, riotously, tumultuously, and violently engage in a fight with police of the aforesaid park, names to the relator unknown, and did, then, there, and in the manner aforesaid, solicit, incite, and urge other persons of unknown identity to do violence against the aforesaid police, and against the peace and good order of the city aforesaid; the United States then being in a state of war.

CHARGE II

AFFRAY

SPECIFICATION

* * *, did, on or about July 17, 19—, on a public street in the city of ———, ———, wilfully, violently, and without justifiable

cause, engage in a fight with a civilian, name to relator unknown, and did, then, there, and in the manner aforesaid, do violence against the peace and good order of the city aforesaid.

CHARGE III

DISORDER

SPECIFICATION

* * *, did, on or about July 17, 19—, in a public restaurant in the city of ———, ———, wilfully, knowingly, and without justifiable cause, create a disturbance against the peace and order of the city aforesaid by shouting in a loud and boisterous manner and by overturning chairs and tables in said restaurant.

93. Blackmail and extortion.—Blackmail is provided for under the 22d A. G. N.; extortion, under the 22d A. G. N., and by 18 U. S. Code 171. (L. R. N. A. 1329.)

Charges:

1. Blackmail.
2. Extortion.
3. Attempted extortion.

Elements: Blackmail is an extortion of hush money; obtaining value from a person as a condition of refraining from making an accusation against him, or disclosing some secret calculated to operate to his prejudice. In common parlance it is synonymous with extortion, but this latter offense as provided for in the Code means a form of malfeasance in office consisting of the unlawful and corrupt taking or receiving by a public officer, under color of his office, of any money or thing of value that is not due him.

Section 171 of the Code reads: "Every officer, clerk, agent, or employee of the United States, and every person representing himself to be or assuming to act as such officer, clerk, agent, or employee, who, under color of his office, clerkship, agency, or employment, or under color of his pretended or assumed office, clerkship, agency, or employment, is guilty of extortion, and every person who shall attempt any act which if performed would make him guilty of extortion, shall be fined not more than five hundred dollars, or imprisoned not more than one year, or both."

Lesser included offenses: For attempted blackmail—scandalous conduct tending to the destruction of good morals.

Sample specifications:

CHARGE I

BLACKMAIL

SPECIFICATION

* * *, chief machinist's mate, U. S. Navy, while so serving on board the U. S. S. ———, having threatened to report one F—— G. H——, fireman first class, U. S. Navy, for having committed the crime of sodomy, did, on or about September 24, 19—, on board said ship, demand, receive, and take of the said H—— the sum of twenty-five dollars (\$25.00), lawful money of the United States, in consideration of his, the said E——'s, failing to report to proper authority said alleged crime.

CHARGE II

EXTORTION

SPECIFICATION

* * *, while so serving at the U. S. marine barracks, ———, ———, did, on or about June 10, 19—, at said barracks, wilfully, knowingly, corruptly, feloniously, and under color of his office, ask, demand, receive, extort, and take of one U—— V. W——, private, U. S. Marine Corps, the sum of ten dollars (\$10.00), lawful money of the United States, as and for a fee, compensation, and reward to him, the said T——, for furnishing the said W—— with a liberty pass.

CHARGE III

ATTEMPTED EXTORTION

SPECIFICATION

* * *, did, on or about March 31, 19—, on board said ship, wilfully, knowingly, corruptly, feloniously, and under color of his office, ask and demand and attempt to receive, extort, and take of one P—— Q. R——, seaman second class, U. S. Navy, stationed on board said ship and then detailed as messman, the sum of five dollars (\$5.00), lawful money of the United States, as and for a fee, compensation, and reward to him, and said O——, for continuing the said R—— in the detail of messman.

94. Breaking arrest.—This is provided for under the 22nd A. G. N. Charge: Breaking arrest.

Elements: There are three essentials to arrest—authority, intention, and restraint. There must have been an intention to arrest and such intention must have been understood by the person arrested. The accused must be cognizant of having been placed under arrest by order of an officer authorized to do so. A prisoner at large is a person under arrest, and the entry in the accused's service record that he was absent without leave while a prisoner at large is sufficient to prove the charge. One merely restricted to his ship or station is not necessarily under arrest.

Lesser included offense: Conduct to the prejudice of good order and discipline.

Sample specifications:

CHARGE

BREAKING ARREST

SPECIFICATION 1

* * * while so serving on board the U. S. S. ———, did, on or about August 25, 19—, while a prisoner at large on board said ship by lawful order of his commanding officer, break his arrest and leave the aforesaid ship.

SPECIFICATION 2

* * * while being held at the U. S. marine barracks, ———, ———, as a straggler from the U. S. S. ———, to which ship he had been regularly assigned, and while a prisoner under the charge of a sentry at said barracks, by lawful order of the commanding officer thereof, did, on or about September 4, 19—, break his arrest and leave said barracks.

SPECIFICATION 3

* * *, did, on or about September 6, 19—, while a prisoner confined in the brig at said station by lawful order of his commanding officer, break his arrest and leave said station.

95. Breaking quarantine.—This is provided for under the 22nd A. G. N.

Charge: Breaking quarantine.

Elements: The quarantine must have been established by proper authority and the accused must have known of it.

Lesser included offense: Conduct to the prejudice of good order and discipline.

Sample specification:

CHARGE

BREAKING QUARANTINE

SPECIFICATION

* * * while so serving at the U. S. naval hospital, naval training station, ———, ———, did, on or about May 23, 19—, while regularly detailed and serving in unit number twelve of said hospital, well knowing that said unit was then in quarantine on account of scarlet fever, and that he was subject to said quarantine, knowingly, wilfully, and without authority, then and there break said quarantine and leave said unit and did remain absent therefrom for a period of about thirteen hours.

96. Burglary or housebreaking.—This is provided for under the 22d A. G. N.

Charges:

1. Burglary.
2. Housebreaking.

Elements: Burglary at common law is the breaking and entering, in the night, of another's dwelling house, with intent to commit a felony therein.

Five elements are essential to this offense:

(1) The house must be the dwelling house of another, i. e., a house in the status of being occupied at the time of breaking and entering. Dwelling house includes outhouses within the common inclosure.

(2) A breaking, actual or constructive, of some part of the house itself. The requirements of constructive breaking are met if entry is effected by trick, fraud, false pretenses, intimidation, or conspiracy with a servant or other inmate who opens the door.

(3) An entry, but the entry of any part of the body is sufficient.

(4) A breaking and entering at night, but not necessarily on the same night.

(5) An intent to commit a felony at the time of breaking and entering, but the felony need not be consummated or even attempted.

Both burglary and the intended felony should be charged. Thus, where a person breaks into a house at night with intent to commit rape, both "burglary" and "rape" or "scandalous conduct tending to the destruction of good morals" (for the attempted rape) should be charged.

If all the elements of burglary are present except that the act is not done in the nighttime, or that the building is not a dwelling house, the offense is housebreaking.

Lesser included offense: Scandalous conduct tending to the destruction of good morals.

Sample specifications:

CHARGE I

BURGLARY

SPECIFICATION

* * *, did, on or about April 13, 19—, in the city of ———, ———, in the nighttime, feloniously and burglariously break and enter the dwelling house of one D—— E. F——, with intent feloniously to take, steal, and carry away goods and chattels therein. (Or, with intent then in said dwelling house feloniously to ravish and carnally know G—— H. I——, *or*, as the case may be.)

CHARGE II

HOUSEBREAKING

SPECIFICATION

* * *, did, on or about May 28, 19—, in the city of ———, ———, feloniously and unlawfully break and enter the store of the ——— Company, located at number ——— ——— Street, in said city, with intent feloniously to take, steal, and carry away goods and chattels therein.

97. Carelessly or negligently endangering lives of others.—This is provided for under the 22d A. G. N.

Charge: { Carelessly } endangering lives of others.
 { Negligently }

Lesser included offense: Conduct to the prejudice of good order and discipline.

Sample specification:

CHARGE

CARELESSLY ENDANGERING LIVES OF OTHERS

SPECIFICATION

* * *, while so serving at the U. S. marine barracks, ———, ———, and while posted as a sentinel in the post prison at said bar-

racks, said prison at said time having ten prisoners confined therein, having in his possession a loaded forty-five caliber automatic pistol, and it being his duty to handle said pistol with due caution and circumspection, did, on or about October 15, 19—, in said prison neglect and fail to handle said pistol with due caution and circumspection in that he, the said D——, did fire and cause to be fired a shot from said pistol, and did, therein and thereby, then and there, endanger the lives of the prisoners confined in said prison.

98. Conduct to the prejudice of good order and discipline.—This is provided for under the 22d A. G. N.

Charge: Conduct to the prejudice of good order and discipline.

Elements: This charge is to be used for offenses not specified and not of a scandalous character. The remarks in section 59 apply, in general, to this charge also.

By the term "to the prejudice", etc., is to be understood *directly* prejudicial, not *indirectly* or *remotely* merely. An irregular or improper act on the part of an officer or man can scarcely be conceived which may not be regarded as in some indirect or remote sense prejudicing discipline; but such distant effects are not contemplated under this charge; and it is, therefore, deemed properly to be confined to cases in which the prejudice is *reasonably direct and palpable*.

Instances of such disorders and neglects in the case of officers are: Disobedience of standing orders, or of the orders of an officer when the offense is not chargeable under a specific article; allowing a man to go on duty knowing him to be drunk; rendering himself unfit for duty by excessive use of intoxicants or drugs.

Instances of such disorders and neglects in the cases of enlisted men are: Failing to appear on duty with a proper uniform; appearing with dirty clothing; refusing to submit to treatment necessary to render him fit for duty; refusing to submit to a necessary and proper operation not endangering life; missing ship; dishonorable neglect to pay debts; and the instances cited under the succeeding section.

Another class of offenses coming under this charge are violations, not of a scandalous nature, of local laws in a country, State, Territory, or District.

Sample specifications:

CHARGE

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND DISCIPLINE

SPECIFICATION 1

* * *, having, while so serving in the U. S. Navy, in a letter dated December 17, 19—, from the Secretary of the Navy, been directed to explain his failure to proceed to ———, ———, in accordance with an order of the Secretary of the Navy, dated November 15, 19—, did, on or about December 29, 19—, at ———, ———, write, send, and publish and cause to be sent and published to the Secretary of the Navy a letter, in tenor as follows: “* * *”, which said letter contains contemptuous and disrespectful words of and against the Secretary of the Navy, namely, the words “* * *”, and violates the respect due from him, the said C——, to the Secretary of the Navy.

SPECIFICATION 2

* * *, while so serving on board the U. S. S. ———, was, on or about September 1, 19—, on board said ship, from previous indulgence in intoxicating liquors, incapacitated for the proper performance of his duties to such an extent as to necessitate his being placed on the sick list.

SPECIFICATION 3

* * *, passed assistant'surgeon, Medical Corps, U. S. Naval Reserve, with the rank of lieutenant, while so serving at the receiving station, U. S. navy yard, ——— ———, did, on or about May 12, 19—, in said city, call the naval hospital at said navy yard over the telephone, and did falsely represent and state to the person answering said telephone at said hospital, in effect that there was an emergency stretcher case at the ——— Hotel, in said city, and that he, the said I——, wanted the ambulance at said hotel right away, whereas in truth and in fact, as he, the said I——, well knew, there was not an emergency stretcher case at said hotel, and he, the said I——, then and there wilfully and falsely misrepresented as aforesaid in order to obtain said ambulance for his own personal use.

SPECIFICATION 4

* * *, while so serving on board the U. S. S. ———, at ———, ———, well knowing that said ship was due to sail on or about August 20, 19—, did, then and there, without authority, deliberately

and wilfully miss said ship when she sailed as aforesaid (33).

SPECIFICATION 5

* * *, while so serving on board the U. S. S. A——, well knowing that he, the said O——, was a member of a draft of men due to be transferred from said ship to the U. S. S. B——, did, on or about September 4, 19—, wilfully and deliberately, and without permission from proper authority, absent himself from his station and duty on board said ship, in order to avoid said transfer to the said U. S. S. B——.

SPECIFICATION 6

* * *, having, on or about August 23, 19—, in the city of ——, ——, become justly indebted to one S—— T. U—— in the sum of about seventy-five dollars (\$75.00), and said debt being thereafter due and owing said U—— (and he, the said R——, having paid in part payment of said debt to said U——, on or about December 30, 19—, the sum of five dollars (\$5.00), and being on or about December 30, 19—, still justly indebted to the aforesaid U—— in the sum of seventy dollars (\$70.00), the balance due on his said debt after the aforesaid payment) did, although often requested by said U—— to pay (said balance of) said debt, dishonorably and without adequate excuse, then and there neglect and fail to pay to said U—— the amount of the aforesaid (balance of said) debt, or any part thereof, and has ever since continued in such neglect and failure.

SPECIFICATION 7

* * *, did, on or about March 1, 19—, in the city of ——, ——, induce one E—— F. G——, of —— ——, to cash a check drawn by him, the said D——, upon the bank of ——, payable to the order of ——, in the sum of ten dollars (\$10.00); and he, the said D——, well knowing that he did not have at the time of drawing said check sufficient funds on deposit in said bank to provide for its payment, did thereafter wholly neglect and fail to provide therefor, and did allow said check, upon presentation at said bank, to be dishonored because of the fact that he, the said D——, had at that time insufficient funds on deposit in said bank to provide for its payment.

(33) Where deliberate intent does not exist, the offense should be charged as absence over leave or absence without leave, alleging as a matter of aggravation the fact that the accused missed the sailing of his ship.

SPECIFICATION 8

* * *, having become justly indebted to the United States in the sum of thirty-two dollars and thirty-four cents (\$32.34), did, on or about July 13, 19—, at said barracks, induce the transportation quartermaster at said barracks to accept as payment of said indebtedness a check, numbered one hundred and twenty-seven, dated July 13, 19—, drawn by him, the said J——, upon the National Bank of ———, ———, payable to the order of "Transportation Quartermaster", in the sum of thirty-two dollars and thirty-four cents (\$32.34); and he, the said J——, well knowing that he did not have at the time of drawing said check sufficient funds in said bank to provide for its payment, did thereafter wholly neglect and fail to provide therefor, and did allow said check, upon presentation at said bank, to be dishonored because of the fact that he, the said J——, did not have at that time sufficient funds on deposit in said bank to provide for its payment.

SPECIFICATION 9

* * *, having become justly indebted to one N—— O. P——, proprietor of the ——— Hotel, ———, ———, in the sum of ninety dollars (\$90.00), did, on or about November 1, 19—, in said city, induce the said P—— to accept as payment of said indebtedness a promissory note, in tenor as follows: "* * *", made and delivered by the said M—— to the said P——, and he, the said M——, well knowing that he did not have at the time of making said note sufficient funds on deposit in said bank to provide for its payment, did thereafter wholly neglect and fail to provide therefor, and did allow said note, upon presentation for payment at said bank by the said P—— on December 14, 19—, the date of its maturity, to be dishonored and protested because of the fact that he, the said M——, had at that time no funds on deposit and to his credit in said bank to provide for its payment.

SPECIFICATION 10

* * *, did, on or about February 19, 19—, on board said ship, referring to one F—— G. H——, chief quartermaster, U. S. Navy, attached to said ship, say, in the presence of one or more other enlisted men of the Navy, "We'll get H—— yet and make him pay for what he has done", or words to that effect, meaning thereby that he would compromise or otherwise injure the said H—— in retaliation for an act or acts performed by the said H—— in the execution of the duties of his office.

SPECIFICATION 11

* * *, did, on or about August 30, 19—, with intent wrongfully to take on board said ship two bottles containing intoxicating liquor, conceal said bottles containing intoxicating liquor, as aforesaid, upon his person and did then at the city of ———, ———, board a shore boat with the intention of thereby and therefrom boarding said ship, and he, the said K——, not having proper authority to take said intoxicating liquor on board said ship for medicinal purposes, did therein and thereby, then and there, wrongfully attempt to take on board said ship intoxicating liquor.

SPECIFICATION 12

* * *, having, on September 4, 19—, been regularly detailed as a member of the guard over prisoners in E-3 barracks, at the said station, on the 6 p. m. to 10 p. m. watch on said date, did, then and there, wilfully, knowingly, and without proper authority, exchange the said 6 p. m. to 10 p. m. watch for the 2 a. m. to 6 a. m. watch on September 5, 19—, with one O——, an enlisted man in the U. S. Navy, given name and rate to the relator unknown.

SPECIFICATION 13

* * *, did, on or about May 19, 19—, at said barracks, wrongfully and knowingly attempt to dispose of six suits of underwear, of the total value of about twelve dollars (\$12.00), property of the United States intended for the naval service thereof, which said underwear had been furnished him, the said X——, for use in said service, by offering to give said underwear to one Y—— Z. A——, a civilian.

SPECIFICATION 14

* * *, while so serving as a general court-martial prisoner at the U. S. naval prison, navy yard, ———, ———, having, on or about December 8, 19—, at said prison, been lawfully ordered by one K—— L. M——, private, U. S. Marine Corps, who was then and there regularly on duty as a sentinel on post, as he, the said J——, well knew, to leave a crowd of prisoners congregated around a spiral staircase at said prison, and go down into the new prison, did, then and there, refuse to obey, and did wilfully disobey, the said lawful order of the said M——.

SPECIFICATION 15

* * *, having, on or about August 21, 19—, on board said ship, received a letter addressed to him by the Secretary of the Navy in tenor as follows: “* * *”, did, notwithstanding the lawful order of the Secretary of the Navy contained therein, immediately to acknowledge the receipt of said letter, then and there, neglect and fail, and has ever since neglected and failed, to make such acknowledgement, and did therein and thereby wilfully disobey the said lawful order of the Secretary of the Navy.

SPECIFICATION 16

* * *, did, on or about December 19, 19—, in the city of ———, ———, wilfully and knowingly use abusive, obscene, and threatening language toward his superior officer, in that he, the said P——, did say to one R—— S. T——, ensign, U. S. Navy, then on leave of absence, “I did it, and if you don’t like it, I’ll break your ——— head”, or words to that effect.

SPECIFICATION 17

* * *, did, on or about December 21, 19—, on board said ship, in violation of a lawful ship’s order duly promulgated by the commanding officer thereof on or about January 25, 19—, providing as follows:

“Enlisted men on board this ship are forbidden to have the property of other enlisted men in their possession without permission from proper authority”, wilfully and knowingly have in his possession, without permission from proper authority, one gold watch, of the value of about thirty-five dollars (\$35.00) and one gold chain of the value of about seven dollars (\$7.00), the said watch and the said chain being the property of one L—— M. N. ———, coxswain, U. S. Navy. (34)

SPECIFICATION 18

* * *, did, on or about August 29, 19—, on a street in the city of ———, ———, wilfully, maliciously, and without justifiable cause, strike and catch hold of and pull one C—— D. E——, a civilian.

(34) In view of art. 122 (3), Navy Regulations, the offense of having clothing or bedding of another person unlawfully in possession should be alleged under the charge “Violation of a lawful regulation issued by the Secretary of the Navy.”

SPECIFICATION 19

* * *, did, on or about August 29, 19—, on a street in the city of ———, ———, wilfully, maliciously, and without justifiable cause, assault one C——— D. E———, a civilian.

SPECIFICATION 20

* * *, did, on or about May 5, 19—, in the city of ———, ———, with intent to do bodily harm, and without just cause or excuse, assault with a dangerous weapon, to wit, a revolver, one M——— N. O———, a civilian.

SPECIFICATION 21

* * *, did, on or about September 21, 19—, while under the influence of intoxicating liquor, wilfully, wrongfully, and unlawfully drive and operate an automobile, to wit, a Chevrolet, over a public highway of the Commonwealth of ———, to wit, ——— Boulevard, in the city of ———.

SPECIFICATION 22

* * * did, on or about August 25, 19—, on board said ship, knowingly, wilfully, and without proper authority, and not for authorized medical purposes, keep in his possession alcoholic liquor, to wit, whiskey.

99. Conduct unbecoming an officer and a gentleman.—This is provided for under the 22d A. G. N.

Charge: Conduct unbecoming an officer and a gentleman.

Elements: The conduct contemplated is action or behavior in an official capacity which, in dishonoring or disgracing the individual as an officer, seriously compromises his character and standing as a gentleman; or action or behavior in an unofficial or private capacity which, in dishonoring or disgracing the individual personally as a gentleman, seriously compromises his position as an officer and exhibits him as morally unworthy to remain a member of the honorable profession of arms.

There are certain moral attributes common to the ideal officer and the perfect gentleman, a lack of which is indicated by acts of dishonesty or unfair dealing; of indecency or indecorum; of lawlessness, injustice, or cruelty.

Instances of violation of this charge are: Knowingly making a false official statement; dishonorable neglect to pay debts; opening and reading another's letters; giving a check on a bank where there were no funds to meet it, and without intending that there should be; using insulting or defamatory language to another officer in his

presence, or about him to other military persons; being grossly drunk and conspicuously disorderly in a public place; public association with notorious prostitutes; failing without a good cause to support his family.

Lesser included offense: Conduct to the prejudice of good order and discipline.

Sample specifications:

CHARGE

CONDUCT UNBECOMING AN OFFICER AND A GENTLEMAN

SPECIFICATION 1

* * * having on or about March 5, 19—, while so serving on board the U. S. S. ———, been reported to the Secretary of the Navy by D——— E. F———, of ———, ———, for the nonpayment of a just indebtedness of five hundred fifty-three dollars and forty-five cents (\$553.45), the balance of an account due and owing the said F——— for goods purchased by the said C——— at various times between January 25, 19—, and April 19, 19—, and said indebtedness being thereafter due and owing, and an itemized account of said indebtedness having been referred to him, the said C———, by indorsement, in tenor as follows:

“NAVY DEPARTMENT,

“BUREAU OF NAVIGATION,

“*Washington, D. C., March 6, 19—.*

“To: Commander A——— B. C———, U. S. N., U. S. S. ———
(commanding officer).

“Subject: Alleged indebtedness to D——— E. F———.

“1. Referred for such statement as you may desire to make relative to this alleged indebtedness.

“2. You will inform the Department immediately—

“First. Is this a just debt and owed by you?

“Second. If it be a just debt, have you taken any steps to make payment? If so, when?

“Third. When do you propose to pay it in full?

“3. If it is a just debt, an official report will be made to the Department when it has been paid.

“4. Return all papers.

“G——— H. I———.”

he, the said C———, did return said indorsement to the Bureau of Navigation aforesaid, with a written statement, in tenor as follows:

“U. S. S. ———,

“*Shanghai, China, May 14, 19—.*

“From: Commander A——— B. C———, U. S. Navy.

“To: Bureau of Navigation, via official channels.

“Subject: Alleged indebtedness to D——— E. F———.

“Reference: Bureau of Navigation’s indorsement of 6 March 19—.

"1. In compliance with the foregoing reference I have to state that the bill of F—— is a just debt.

"2. My reason for failing to pay said debt is that unforeseen necessities have made immediate demands upon my money. I am making arrangements at present for the payment of this debt and will make payment on or about July 1, 19—.

"A—— B. C——."

and he, the said C——, did neglect and fail to pay to the said F—— the amount of said debt, or any part thereof, as he stated he would do in his written statement as above set forth, and has ever since continued in such neglect and failure, and he, the said C——, has therein and thereby exhibited a dishonorable indifference to his written word and just indebtedness and a disregard of his obligations as an officer and a gentleman.

SPECIFICATION 2

* * *, having, on or about April 16, 19—, while so serving on board the U. S. S. ——, voluntarily signed a paper pledging himself to abstain from all use of intoxicating liquors, except when prescribed as medicine, for a period of five years, which paper was formally witnessed by one E—— F. G——, captain, U. S. Navy, the commanding officer of said ship, did, on or about October 25, 19—, in the city of ——, ——, notwithstanding his pledge so given and in violation thereof, drink intoxicating liquor not prescribed as medicine, and he, the said D——, did thereby exhibit a disregard of his obligations as an officer and a gentleman.

SPECIFICATION 3

* * *, while so serving as a student officer in the basic officers' class, Marine Corps Schools, U. S. Marine barracks, navy yard, ——, ——, did, on or about April 27, 19—, at said barracks, while undergoing a written examination in the subject of the combat principles of a rifle company pursuant to his duty in connection with said class, cheat in said examination, in that he, the said L——, did, in answering questions propounded in said examination, wrongfully and wilfully receive assistance, which he well knew to be unauthorized, by surreptitiously using a paper in his possession as an aid in said examination, which said paper contained information relative to the subject matter in which he was being examined and concerning which he was required to submit answers in response to questions propounded; and he, the said L——, did therein and

thereby exhibit a disregard of his obligations as an officer and a gentleman.

100. Embezzlement.—Embezzlement of money, or other property, etc., intended for the military or naval service is provided for under the 14th A. G. N., paragraph 8, and is properly charged as shown in section 89. Embezzlement of any other money or property, public or private, is provided for under the 22d A. G. N. Embezzlement of moneys, goods, chattels, records, or property of the United States is covered by 18 U. S. Code 100; of any mail bag or other property in use by or belonging to the Post Office Department, by 18 U. S. Code 813; and of any money or property by any one connected with the Postal Service, by 18 U. S. Code 355. (L. R. N. A. 1328, 1337, 1344.)

Charge: Embezzlement.

Elements: The elements of embezzlement are set out in section 89.
Sample specifications:

CHARGE

EMBEZZLEMENT

SPECIFICATION 1

* * * while so serving on board the U. S. S. ———, having received into his possession a sum of about sixty-nine dollars and sixty cents (\$69.60), the property of the cigar mess of said ship, to be used by him, the said C———, for the purpose of purchasing cigars for said mess, and having failed and neglected to purchase said cigars as he had agreed to do, did, on or about April 19, 19—, in the city of ———, ———, feloniously embezzle and convert to his own use the said sum of about sixty-nine dollars and sixty cents (\$69.60), lawful money of the United States, the property of said mess.

SPECIFICATION 2

* * *, while so serving as post exchange officer in charge of the post exchange at the U. S. marine barracks, ———, ———, having received into his possession and under his control in the execution and under color of his office as aforesaid a sum of about eleven thousand one hundred twelve dollars and sixty-six cents (\$11,112.66) in lawful money of the United States, which he, the said F———, well knew to be the property of said post exchange, did, on or about February 1, 19—, and on various and sundry days thereafter, exact days to the relator unknown, at said barracks, feloniously embezzle and convert to his own use various and sundry sums

of said money, exact amounts to the relator unknown, amounting in all to eleven thousand one hundred twelve dollars and sixty-six cents (\$11,112.66) or thereabouts, the property of said post exchange.

SPECIFICATION 3

* * *, while so serving as Navy mail clerk on board the U. S. S. ——— and as such Navy mail clerk being employed in the Navy branch of the U. S. Postal Service, having received into his possession and under his control, in the execution and under color of his office, as aforesaid, a sum of about thirty dollars (\$30.00) in lawful money of the United States, from one J—— K. L——, seaman second class, U. S. Navy, for the purpose of purchasing a postal money order of about thirty dollars (\$30.00) for the said L—— from the United States, did, on or about June 15, 19—, on board said ship, feloniously embezzle and convert to his own use said sum of money of about thirty dollars (\$30.00), property of the said L——.

101. False imprisonment.—This is provided for under the 22d A. G. N.

Charge: False imprisonment.

Elements: False imprisonment is any unlawful restraint of another's freedom of locomotion in any place whatever. It may be in a prison, in a house, or in a public street. There need be no actual force, but the person must reasonably apprehend force in case he does not submit. It must be against the will of the person imprisoned.

Lesser included offenses: Assault; scandalous conduct tending to the destruction of good morals.

Sample specification:

CHARGE

FALSE IMPRISONMENT

SPECIFICATION

* * *, while so serving on board the U. S. receiving ship at the navy yard, ———, ———, did, on or about November 26, 19—, in the city of ———, ———, not having been detailed on duty in said city as a member of the naval police, falsely represent to one J—— K. L——, a civilian, that he, the said I——, was a member of the naval police, and that as such he, the said I——, had authority to place him, the said L——, under arrest, and he, the said I——, did then and there without justifiable cause, unlawfully, and without authority, take the said L—— to the sixth district police station in the said city and did then and there cause him, the said L——, to

be falsely, unlawfully, and without justifiable cause, placed under arrest by the civil authorities at said police station.

102. Forgery.—Forging a signature for the purpose of obtaining payment of a claim against the United States is provided for in the 14th A. G. N., paragraph 5, and is charged as shown in section 85. Forgery of a military or naval pass or certificate of discharge is provided for under the 22d A. G. N., and by the acts of March 4, 1917 (18 U. S. Code, 136), and June 15, 1917 (18 U. S. Code, 132), and is charged as shown in section 113. Other forgeries against the United States are provided for in 18 U. S. Code, 262. Any other forgeries are provided for under the 22d A. G. N.

Charge: Forgery.

Elements: Forgery is the fraudulent making or alteration of a writing to the prejudice of another man's right. The making or alteration must be false, made with intent to defraud. The instrument, as made or altered, must be of apparent legal efficacy, and therefore the alteration must be material. The offense is essentially making an instrument appear what it is not.

It is forgery to personate another and write his name, or for the accused to sign with his own signature as that of another person having the same name as himself, or to assume the name of a dead or fictitious person provided it is coupled with the intent to defraud.

Lesser included offense: Scandalous conduct tending to the destruction of good morals.

Sample specifications:

CHARGE

FORGERY

SPECIFICATION 1

* * *, while so serving at the U. S. naval hospital, ———, ———, did, on or about March 4, 19—, in the said city, upon the back of a check, numbered ———, dated March 4, 19—, drawn upon the ——— Bank of ———, of said city, by one C—— D. E——, then a depositor in said bank, payable to the order of "D—— E. F——", for the sum of fifteen dollars (\$15.00), without authority, wilfully, falsely, and with intent to defraud, make and forge the name "D—— E. F——", as an indorsement of said check.

SPECIFICATION 2

* * *, having come into possession of a check numbered forty-one thousand two hundred forty-nine, drawn upon the Treasurer of the United States by one "P—— Q. R——", disbursing officer, Sup-

ply Corps, U. S. Navy, with the rank of lieutenant, dated September 18, 19—, payable to the order of "S—— T. U——" for the sum of twelve dollars (\$12.00), did, on or about September 18, 19—, at said hospital, without authority, wilfully, falsely, and with intent to defraud, alter and forge said check by changing and altering the name on the face of said check, namely, the name of the payee "S—— T. U——", to read "M—— N. O——."

SPECIFICATION 3

* * *, did, on or about September 18, 19—, at said hospital, without authority, wilfully, falsely, and with intent to defraud, alter, forge, and raise the amount of said check from two dollars and seventeen cents (\$2.17) to ninety-two dollars and seventeen cents (\$92.17) by inserting a figure "9" before the figures "2.17" and the word "Ninety" before the words and figures "Two and 17/100" on the face of said check.

103. Fraudulent enlistment.—This is provided for under the 22nd A. G. N., being specifically added by the act of March 3, 1893.

Charge: Fraudulent enlistment.

Elements: The first essential of this offense is the wilful and knowing concealment of a fact which, if known to the recruiting officer, would cause the rejection of the applicant. Where the accused thus fraudulently enlists without a discharge from another enlistment in the Navy or Marine Corps, the first essential is all that is requisite. If, however, the accused has never previously been in the Navy or Marine Corps, or has been discharged therefrom, the second essential, the receipt of pay or allowances under the fraudulent enlistment is also requisite. But in either case it is a good rule, where there is any possible doubt as to the status of the accused, to allege and prove the receipt of pay and allowances.

The misrepresentation or concealment may be in matters which are designed to open the door to inquiry concerning the qualifications or disqualifications for enlistment, such as questions as to previous service, previous applications for enlistment, etc.

The qualifications or disqualifications may be prescribed by law, regulations, or orders.

Answers to questions having no bearing on the applicant's qualifications for enlistment, such as questions as to the applicant's name, address, or immaterial statements as to age, are not sufficient.

The concealment must be wilful, and thus mere mistake or forgetfulness will not make the offense.

Lesser included offense: Conduct to the prejudice of good order and discipline.

Sample specifications:

CHARGE

FRAUDULENT ENLISTMENT

SPECIFICATION 1

* * * did, on or about February 21, 19—, at the U. S. Navy recruiting station, ———, ———, procure himself to be accepted and did fraudulently enlist as an apprentice seaman in the U. S. Navy, under the name of D—— E. F——, by falsely representing that he had had no previous service in, and had never deserted from, the U. S. Navy, and by deliberately and wilfully concealing from the recruiting officer the fact that he had, on or about July 6, 19—, while serving under the name and rate of A—— B. C——, seaman second class, deserted from the U. S. Navy and was a deserter at large, when, except for such misrepresentation and concealment he would not have been enlisted; and, furthermore, that he, the said C——, alias F——, has, since said enlistment, received pay and allowances thereunder.

SPECIFICATION 2

* * *, by falsely representing that he had never been discharged from the United States service through sentence of a military court and by deliberately and wilfully concealing from the recruiting officer the fact that he had, on or about November 19, 19—, while serving under the name and rank of ——— ———, private, been discharged from the U. S. Army, pursuant to the sentence of a general court-martial, with a dishonorable discharge, when, except for such misrepresentation and concealment, he would not have been enlisted; and, furthermore, that he, the said ———, alias ———, has, since said enlistment, received pay and allowances thereunder.

SPECIFICATION 3

* * *, did, on or about May 17, 19—, at the U. S. Navy recruiting station, ———, ———, procure himself to be accepted and did fraudulently enlist as an apprentice seaman in the U. S. Navy, by falsely representing that he had never been convicted of a felony (had never been imprisoned in a reformatory (jail) (penitentiary) (was of the age of eighteen years), and by deliberately and wilfully concealing from the recruiting officer the fact that he had been convicted of a felony, to wit, larceny, by the ——— court in and for ———, ———, (had been imprisoned in a reformatory (jail) (penitentiary), to wit, the ——— State Reformatory, under the sentence

of a civil court) (was in truth and in fact of the age of sixteen years), when, except for such misrepresentations and concealment, he would not have been enlisted; and furthermore, that he, the said L——, has, since said enlistment, received pay and allowances thereunder.

104. **Malingering.**—This is provided for under the 22d A. G. N.

Charge: Malingering.

Elements: Malingering is feigning sickness or any physical disablement or mental lapse or derangement, for the purpose of escaping duty or work. To constitute the offense the pretension must have been successful.

Lesser included offenses: Falsehood; conduct to the prejudice of good order and discipline.

Sample specification:

CHARGE

MALINGERING

SPECIFICATION

* * *, while so serving at the U. S. marine barracks, navy yard, ———, ———, did, on or about April 21, 19—, while a patient at the U. S. naval hospital, ———, ———, feign to be ill and incapacitated for the proper performance of duty by pretending that he could not speak aloud, whereas he was, in fact, capable of speaking aloud, and did continue in the aforesaid pretension until on or about August 9, 19—; and he, the said R——, was, in consequence of said pretension, retained as a patient in the said hospital between the aforesaid dates, and was thereby excused from performing duty between the said dates.

105. **Neglect of duty.**—This is provided for under the 22nd A. G. N.

Charge: Neglect of duty.

Elements: This offense is distinguished from the offense of culpable inefficiency in the performance of duty, in that it is a failure to do, whereas the other is not a failure to do at all, but a doing in such a manner as to be blameworthy. A person may neglect his duty by never entering upon it, in whole or in part. It is an omission rather than an act. A duty may be imposed by a law, regulation, order, or custom of the service in force at the time of the commission of the offense.

The facts constituting the neglect must be set forth with precision and certainty.

Lesser included offense: Conduct to the prejudice of good order and discipline.

Sample specifications:

CHARGE

NEGLECT OF DUTY

SPECIFICATION 1

* * *, while so serving on board the U. S. S. ——— as navigator of said vessel, making passage from ——— to ———, did, on or about May 4, 19—, although the weather permitted, neglect and fail to obtain the local deviation of the standard compass of said ship, as it was his duty to do.

SPECIFICATION 2

* * *, having, on or about September 6, 19—, while on duty as a member of the guard over prisoners confined in the brig, at the said station, been lawfully ordered by one J—— K. L——, sergeant, U. S. Marine Corps, who was then and there in the execution of his duties as sergeant of the guard, to instruct his relief to release no prisoners to go to the head during the night, did, on the said date, at the said brig, upon being relieved by one M—— N. O——, private, U. S. Marine Corps, neglect and fail to give the said O—— the instructions aforesaid, as it was the duty of the said I—— to do.

SPECIFICATION 3

* * *, having, on or about January 1, 19—, been regularly detailed as mail orderly in charge of the U. S. post office on board said ship, and it being the duty of the said V——, while so serving as said mail orderly, to see that the postal funds of said post office were properly safeguarded, and he, the said V——, well knowing that there was no lock for the door to the compartment where the safe of said post office was kept, and that the door of said safe could not be properly secured owing to the combination of said safe being out of order, and that for the reasons aforesaid the said postal funds kept in said safe were not and could not be properly safeguarded, did, during the period from about January 1, 19—, to about February 1, 19—, on board said ship, while serving as mail orderly pursuant to said detail, neglect and fail to see that the said postal funds kept in said safe were properly safeguarded, as it was his duty to do, by neglecting and failing to provide and cause to be provided a proper lock for said door to said compartment and by neglecting and failing to repair and fix and cause to have repaired and fixed the combination of said safe, and by neglecting and failing to notify and cause to be notified proper authority that said postal funds kept in said safe were

not being and could not be safely kept in said safe, for the reasons aforesaid, namely, on account of the said insecure conditions of said door of said compartment and said door of said safe, as a result of which neglect and failure as aforesaid, said postal funds of the amount of about six hundred nineteen dollars and sixteen cents (\$619.16), the property of the United States, were stolen from said safe, by a person or persons, by name to the relator unknown, on or about February 17, 19—.

SPECIFICATION 4

* * *, having been regularly detailed to stand the watch from 8:00 p. m. to 12:00 midnight on November 16, 19—, in the engine-room of said ship, and well knowing that he had been so detailed, did, on said date, on board said ship, without proper authority, neglect and fail to stand the aforesaid watch as it was his duty to do.

106. Resisting arrest.—This is provided for under the 22d A. G. N.

Charge: Resisting arrest.

Lesser included offense: Conduct to the prejudice of good order and discipline.

Sample specification:

CHARGE

RESISTING ARREST

SPECIFICATION

* * *, did, on or about August 9, 19—, on board said ship, while being lawfully placed under arrest by one X—— Y. Z——, then a boatswain's mate, first class, U. S. Navy, forcibly resist arrest.

107. Seduction.—This is provided for under the 22d A. G. N. Seduction of a female passenger on board a vessel is provided for by 18 U. S. Code 459.

Charge: Seduction.

Elements: Seduction is a statutory offense. The elements of the offense set out in section 459 of the Code, with the addition that the female was of previous chaste character, shall govern naval courts-martial in all cases of this offense occurring otherwise than during a voyage. Accordingly, it may be defined as seducing and having illicit connection with any female of previous chaste character under promise of marriage, or by threats, or the exercise of authority, or solicitation, or the making of gifts or presents. Subsequent inter-marriage of the parties may be pleaded in bar.

In addition to the foregoing in all cases, the woman must be "seduced." This term implies that the intercourse shall be accom-

plished by artifice and deception, and that there shall be something more than a yielding by the woman to mere lust or passion.

The question of the chaste character of the woman is as of the time of the seduction.

Lesser included offenses: Fornication; scandalous conduct tending to the destruction of good morals.

Sample specification:

CHARGE

SEDUCTION

SPECIFICATION

* * * while so serving on board the U. S. receiving ship, navy yard, ———, did, on or about May 14, 19—, in the city of ———, ———, under and by means of a promise of marriage, seduce and have illicit intercourse with one D——— E. F———, a female of previous chaste character.

108. Sodomy.—This is provided for under the 22d A. G. N.

Charge: Sodomy.

Elements: Sodomy, in its broadest sense, is the carnal copulation by human beings with each other against nature or with a beast, in which sense it includes "the crime against nature", "bestiality", and "buggery." In its narrower sense sodomy is the carnal copulation between human beings per anum. Penetration is a necessary element, and when proven is sufficient for conviction. If there be doubt only as to the completion of the offense, the lesser included offense of scandalous conduct tending to the destruction of good morals should be found proved.

When strictly and impartially proved, this offense well merits strict and impartial punishment; but it is from its nature so easily charged, and the negative so difficult of proof, that the accusation ought to be made out particularly clearly. The evidence should be plain and satisfactory in proportion as the crime is detestable.

Lesser included offense: Assault; scandalous conduct tending to the destruction of good morals.

Sample specifications:

CHARGE

SODOMY

SPECIFICATION 1

* * * while so serving on board the U. S. S. ———, did, on or about March 3, 19—, in the hold of said ship, in and upon the body of

one D—— E. F——, then a seaman second class, U. S. Navy, commit sodomy.

SPECIFICATION 2

In that G—— H. I——, ship's cook first class, and J—— K. L——, seaman second class, U. S. Navy, while so serving on board the U. S. S. ——, did, on or about November 13, 19—, in the forehold of said ship, together and with each other, commit sodomy.

SPECIFICATION 3

* * *, did, on or about March 2, 19—, in a tent in said navy yard, wilfully and knowingly, indecently and lewdly, permit one P—— Q. R——, apprentice seaman, U. S. Navy, to commit sodomy in and upon his, the said O——' body, and he, the said O——, did therein and thereby, then and there, commit sodomy.

109. **Unauthorized use of vehicles, etc.**—This is provided for under the 22d A. G. N.

Charge: Unauthorized use of

an automobile, a vehicle, a boat, etc.	}	of another.
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Elements: This offense is commonly called "joy riding" and is short of larceny in that the intent permanently to deprive the owner of his property is lacking. The word "offense" is here used in its technical sense, and to lie under this article the offense must be in violation of some criminal code (Federal or State) of the place where the act was committed, in which latter event the specification should be alleged in the words of the statute concerned. The court martial may take judicial notice of the statutory provision on the subject in the State within whose territorial limits it sits. If the property is of the United States, the offense should be charged as shown in section 90.

Lesser included offense: Scandalous conduct tending to the destruction of good morals.

Sample specification:

CHARGE

UNAUTHORIZED USE OF AN AUTOMOBILE OF ANOTHER

SPECIFICATION

* * * while so serving at the U. S. naval hospital, ——, ——, did, on or about October 12, 19—, wrongfully, wilfully and unlawfully take, drive, and operate an automobile, to wit, a Chevrolet, the property of one I—— J. K——, passed assistant surgeon,

Medical Corps, U. S. Navy, with the rank of lieutenant, from the said hospital without the permission of the said K——, and did damage said automobile to the extent of about two hundred fifty dollars (\$250.00).

110. Uttering.—Using a forged or counterfeit signature for the purpose of obtaining payment of a claim against the United States is provided for in the 14th A. G. N., paragraph 5, and is charged as shown in section 85. Other utterings against the United States are provided for by 18 U. S. Code 265. Any other utterings are provided for under the 22d A. G. N.

Charge: Uttering a forged writing.

Elements: To utter a forged instrument is to offer it, directly or indirectly, by words or actions, as good. Uttering is in the nature of an attempt to cheat by means of a forged instrument. The forgery is uttered when there is an attempt to make use of it. It is not necessary that there be anything more than the declaration that the instrument is good; it need not be actually accepted or passed.

Uttering and forgery are not different degrees of the same offense, but are distinct offenses.

Lesser included offense: Scandalous conduct tending to the destruction of good morals.

Sample specifications:

CHARGE

UTTERING A FORGED WRITING

SPECIFICATION 1

* * * while so serving at the U. S. marine barracks, ——, ——, did, on or about April 20, 19—, in said city, with intent to defraud, utter, offer, and present as true to one D—— E. F——, a United States postal money order bearing the serial number two hundred forty-three thousand six hundred five and the office number twenty-two thousand six hundred, dated April 12, 19—, made out at ——, ——, signed “——”, as postmaster, payable to the order of “J—— K. L——”, for the sum of fifteen dollars (\$15.00), bearing a signature “J—— K. L——” as an endorsement of said money order, which said signature was false, forged, and counterfeit, as he, the said C——, well knew.

SPECIFICATION 2

* * *, did, on or about March 4, 19—, in the city of ——, ——, with intent to defraud, utter, offer, and present as true to one Q—— R. S—— a check numbered naught naught naught sixty-two,

dated March 4, 19—, drawn upon the ——— Bank of ———, of said city, payable to the order of "T——— U. V———", for the sum of fifteen dollars (\$15.00), bearing a signature "T——— U. V———", as an endorsement of said check, which said signature was false, forged, and counterfeit, as he, the said P———, well knew.

111. Wilful destruction of property.—This is provided for under the 22d A. G. N. If the property is of the United States, the offense is charged as shown in section 52. If the property is not of the United States but the conditions of the 8th A. G. N., paragraph 16, are satisfied, the offense should be laid thereunder, as shown in section 72.

Charge: Wilfully destroying property.

Elements: This offense consists of any wilful physical injury to property of another from ill will or resentment toward the owner or from wantonness.

Lesser included offense: Conduct to the prejudice of good order and discipline.

Sample specification:

CHARGE

WILFULLY DESTROYING PROPERTY

SPECIFICATION

* * * while so serving at the U. S. marine barracks, navy yard, ———, ———, did, on or about May 10, 19—, in the city of ———, ———, wilfully and maliciously break a window in a car of the ——— Railroad Company.

112. Conspiracy.—This is provided for under the 22d A. G. N. and by 18 U. S. Code 88. (L. R. N. A. 1325.) Conspiracy to defraud the United States by means of a false claim is provided for in the 14th A. G. N., paragraph 2, and is charged as shown in section 82.

Charge: Conspiracy.

Elements: Section 88 of the Code reads: "If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than ten thousand dollars, or imprisoned not more than two years, or both."

A conspiracy is a corrupt or unlawful agreeing together of two or more persons to do, by concerted action, something unlawful, either as a means or as an end.

Lesser included offense: Scandalous conduct tending to the destruction of good morals.

Sample specification:

CHARGE

CONSPIRACY

SPECIFICATION

* * * while so serving at the U. S. navy yard, ———, ———, did, on or about June 20, 19—, at said navy yard, unlawfully and wrongfully conspire to take, steal, remove, and carry away from the possession of the United States, alcohol, in quantity about two hundred gallons, of the total value of about two hundred dollars (\$200.00), and four gasoline drums of the capacity of about fifty gallons each, of the total value of about sixty dollars (\$60.00), said alcohol and said drums being the property of the United States, stored in the paint shop at the said navy yard, by confederating with, and making an agreement with, one D—— E. F—— and one G—— H. I——, civilian employees in said paint shop, and one J—— K. L——, a civilian employee in the transportation department at said navy yard, whereby it was agreed that the said C—— should furnish the said F—— a pass, and that the said pass should be used by the said F——, the said I——, and the said L—— for the purpose of aiding them in passing and taking said alcohol and said drums from said navy yard, that the said F——, the said I——, and the said L—— should cause said alcohol and said drums, property of the United States, as aforesaid, to be taken, stolen, removed and carried away from the possession of the United States at said navy yard, that the said F—— should sell and dispose of said alcohol and said drums, and that the said C——, in consideration of furnishing said pass for said purpose, should receive one-third of the proceeds of said sale of said alcohol and said drums, and he, the said C—— did, then and there, pursuant to and in accordance with said agreement, secure a pass from one M—— N. O——, lieutenant, U. S. Navy, assistant to the captain of the yard at said navy yard and did, pursuant to and in accordance with, the agreement aforesaid, furnish the said F—— with said pass, obtained as aforesaid; and he, the said C——, by so confederating and agreeing, and by the commission of the acts aforesaid, did, then and there, unlawfully and wrongfully conspire to take, steal, remove, and carry away from the possession of the United States at said navy yard said alcohol and said drums, of the quantity, number, capacity, and values aforesaid, the property of the United States.

113. Forging, etc., military or naval certificate of discharge or pass.—This offense is provided for under the 22d A. G. N. and by the acts of March 4, 1917 (18 U. S. Code 136), and June 15, 1917 (18 U. S. Code 138). (L. R. N. A. 1473, 1489.)

Charges: Any within the terms of the statutes, as Forging a certificate of discharge from the naval service of the United States, etc.

Elements: The act of March 4, 1917, reads: "Whoever shall forge, counterfeit, or falsely alter any certificate of discharge from the military or naval service of the United States, or shall in any manner aid or assist in forging, counterfeiting, or falsely altering any such certificate, or shall use, unlawfully have in his possession, exhibit, or cause to be used or exhibited, any such forged, counterfeited, or falsely altered certificate, knowing the same to be forged, counterfeited, or falsely altered, shall be fined not more than \$1,000 or imprisoned not more than one year, or both, in the discretion of the court."

The act of June 15, 1917, reads: "Whoever shall falsely make, forge, counterfeit, alter, or tamper with any naval, military, or official pass or permit, issued by or under the authority of the United States, or with wrongful or fraudulent intent shall use or have in his possession any such pass or permit, or shall personate or falsely represent himself to be or not to be a person to whom such pass or permit has been duly issued, or shall willfully allow any other person to have or use any such pass or permit, issued for his use alone, shall be fined not more than \$2,000 or imprisoned not more than five years, or both."

Lesser included offense: Conduct to the prejudice of good order and discipline.

Sample specification:

CHARGE I

FORGING A CERTIFICATE OF DISCHARGE FROM THE NAVAL SERVICE OF THE UNITED STATES

SPECIFICATION

* * * while so serving on board the U. S. receiving ship, navy yard, ———, ———, did, on or about November 25, 19— on board said ship, forge a certificate of discharge from the naval service of the United States, known as "Form No. 62, Bu. Navigation", in that he, the said I——, did, without authority wilfully, falsely, and with intent to defraud, make and forge the signature "J—— K. L——, captain, U. S. N., commanding R. S., navy yard, ———, ———", as the officer certifying "that M—— N. O——, a seaman second class, has this day been discharged from the U. S. receiving ship, navy yard, ———, ———, and from the U. S. naval

service by reason of special order Secretary of Navy, A/C Bureau's letter N-614-MCL-12-22-20. Is recommended for reenlistment. Rating best qualified to fill, seaman second class. Dated this 27th day of December 19—, R. S., navy yard, ———, ———"; the United States then being in a state of war.

CHARGE II

UNLAWFULLY HAVING IN HIS POSSESSION A FORGED CERTIFICATE OF DISCHARGE KNOWING SAME TO BE FORGED

SPECIFICATION

* * * did, on or about July 20, 19—, on board said ship, wrongfully, knowingly, and unlawfully have in his possession a forged certificate of discharge from the naval service of the United States, known as "Form No. 7, Bu. Navigation", said certificate not having been issued to and received by the said R—— from proper authority for service in the United States naval service, certifying "that P—— Q. R——, a yeoman third class, has this day been discharged from the U. S. S. ——— and from the naval service by means of special order of Navy Department. Is recommended for reenlistment. Rating best qualified to fill, yeoman second class. Dated this 20 day of July 19—, at ———, ———", and bearing as certifying officer, a signature "S—— T. U——, captain, U. S. N., commanding U. S. S. ———", which said certificate of discharge from the naval service of the United States was forged and false, as he, the said R——, well knew.

CHARGE III

FORGING A NAVAL PASS ISSUED BY THE AUTHORITY OF THE UNITED STATES

SPECIFICATION

* * * did, on or about October 12, 19—, at said naval hospital, upon a regular liberty pass of said naval hospital, in tenor as follows: "U. S. naval hospital. Post 2. Date, 10-12-19—. Name, V—— W. X——. Rate, H. A. 2c. Begins 4 p. m.; expires 8 a. m. ———, O. O. D." wilfully, without proper authority, and with intent thereby to deceive for the purpose of thereby obtaining unauthorized leave of absence from his station and duty at said naval hospital, make and forge the name and rank "Y—— Z. A——, Lieutenant, M. C.", as the person authorizing said leave of absence.

114. Bribery, etc.—This is provided for under the 22d A. G. N. and by 18 U. S. Code 91, 207, 237, 239, 240 (L. R. N. A. 1325, 1326, 1334, 1336).

Charge: Bribery.

Elements: Bribery is the voluntary giving, offering, promising, receiving, accepting or asking of money, or any other thing of value, with intent to corruptly influence the conduct of one in the discharge of his public or official duties.

Any attempt to influence a person in his public or official conduct by the offer of a reward or pecuniary consideration constitutes the offense.

The above sections of the Code prescribe the statutory offenses of bribery of, or by a person acting for or on behalf of the United States in any official capacity; of any judge, juror, or other person authorized by any law of the United States to hear or determine any question; and of a witness, or person about to be a witness.

Sample specifications:

CHARGE

BRIBERY

SPECIFICATION 1

* * *, while so serving on board the U. S. S. ———, did, on or about June 27, 19—, on board said ship, write and cause to be delivered to one J—— K. L——, chief yeoman, U. S. Navy, serving at the U. S. naval training station, ———, ———, a letter in tenor as follows:

“———, ———, June 27, 19—.

“DEAR SHIPMATE: Having plenty of leisure this evening, allow me to drop you a few lines asking you for a great favor. Now, you see, I have my family living at ———, a few miles south of the training station, and I want to get back to that station some way. Could you find out when the next vacancy occurs at that station in the commissary department, as I hear there will be a 2d class baker leaving for sea soon, and I promise you \$10.00 if you work it for me to get back there some way. Something in it, and if I put in my request next month for ———, kindly keep your eyes open.

“Trusting you will take the matter under consideration for me if you please, and believe me there is something in it if it is approved of. Awaiting your replies,

“Yours very truly,

“G—— I——,
“U. S. S. ——.”

which said letter was written and sent as aforesaid with the intent and purpose, on the part of the said I——, of bribing the said L—— to aid in effecting the transfer of the said I——, from his station and duty on board said ship, to duty at the aforesaid training station.

SPECIFICATION 2

* * *, having been tried by summary court-martial on or about April 16, 19—, and while a prisoner awaiting publication of the result of said trial at the U. S. receiving station, navy yard, ——, ——, did, on or about April 19, 19—, at said receiving station, with the intent and for the purpose therein and thereby bribing one D—— E. F——, chief yeoman, U. S. Navy, serving at said station, offer and promise to pay the said F—— the sum of fifty dollars (\$50.00), if he, the said F——, would procure and accomplish the transfer of him, the said C——, from said station to the U. S. S. ——, prior to the publication of the result of his, the said C——'s, said court-martial.

SPECIFICATION 3

* * *, while so serving as provost marshal at the U. S. naval training station, ——, ——, well knowing that the United States offered to pay as a reward for the apprehension and delivery to U. S. naval authority of a deserter from the U. S. Navy a sum of money of fifty dollars (\$50.00), and for the apprehension and delivery to U. S. naval authority of a straggler from the U. S. Navy a sum of money of twenty-five dollars (\$25.00), and having the duty, in said official capacity, of receiving stragglers and deserters from the U. S. Navy, upon the delivery of said stragglers and deserters at said station, and having the power of deciding whether the reward for such enlisted men of the U. S. Navy, delivered as aforesaid, should be paid as for a straggler or as for a deserter from the U. S. Navy, did, on or about August 13, 19—, in the city of ——, ——, with intent to have his decision influenced thereby, and to pervert the trust imposed in him, the said T——, corruptly and feloniously state to one U—— V. W——, then a police detective, —— city police, ——, ——, that he, the said T——, would furnish him, the said W——, with lists bearing the names of all such stragglers and deserters, and did ask the said W—— to deliver such stragglers and deserters apprehended by him, the said W——, to him, the said T——, and to give him, the said T——, fifty per centum of any money or moneys received from the United States by him, the said W——, for the apprehension and delivery of such stragglers and

deserters, as aforesaid, and the said T—— did therein and thereby then and there ask the said W—— for a promise of money with intent to have his, the said T——'s, decision in his said official capacity and place of trust, as to whether the reward for such persons so delivered should be paid as for a deserter or as for a straggler from the U. S. Navy influenced thereby.

SPECIFICATION 4

* * *, did, on or about March 12, 19—, on board said ship, by offer of money, corruptly endeavor to persuade one D—— E. F——, seaman first class, U. S. Navy, serving on board said ship, to appear in the trial by summary court-martial of the said C——, and then and there, upon oath, to give false testimony at said trial.

115. Perjury and subornation thereof.—This is provided for under the 22d A. G. N. and by 18 U. S. Code 231, 232, 560 (L. R. N. A. 431, 1335).

Charges: 1. Perjury.

2. Subornation of perjury.

Elements: If the charge of this offense is founded on false testimony given before other than a naval general court-martial, then 18 U. S. Code 560 does not apply, and both the authority on which the proceedings before which the alleged false testimony has been given is based, and the subject matter of such proceedings, must be set forth. The specification must also, in any event, include direct and specific allegations negating the truth of the alleged false testimony, together with affirmative averments setting up the truth by way of antithesis. The complete question and false answer must be set forth in their entirety.

The facts and circumstances must show that the testimony, etc., was made wilfully with a corrupt intent.

The testimony (declaration, deposition, or certification) must be material to the issue or matter of inquiry, but any materiality seems sufficient. Thus, it is perjury to testify to facts affecting the credibility of the witness himself, as on cross-examination, or the credibility of other witnesses. The testimony need not, necessarily, be material to the principal issue in the proceedings, but it is sufficient if it is material to any collateral inquiry in the course of proceeding.

Swearing positively to a fact of which the witness knows that he has not knowledge, the corrupt intent and materiality being present, is perjury; and this whether the thing be true or false in fact.

Sample specifications:

CHARGE

PERJURY

SPECIFICATION 1

* * *, while so serving as a prisoner in the U. S. Naval prison, navy yard, ———, ———, having, on February 24, 19—, been duly sworn as a witness before a general court-martial by the president thereof, said court-martial being then convened on board the U. S. S. ———, did, then and there, wilfully, falsely, and contrary to said oath, testify as follows: “(here quote verbatim the questions and answers thereto containing false statement)”, which testimony that “(here quote verbatim the false statement)” was false; whereas, in truth and in fact (here allege affirmatively what was the truth); and the said false testimony was known by him, the said C——, to be false, was material to the issue then and there being tried, and was given with intent to deceive the said general court-martial.

SPECIFICATION 2

* * *, having, on August 31, 19—, been duly sworn as a witness before a board of investigation by the recorder thereof, said board of investigation having been then and there lawfully convened and empowered to administer oaths by order of the commanding officer of said barracks “to inquire into the loss of certain post exchange funds in the hands of F—— H. I——, captain, U. S. Marine Corps, that occurred on August 30, 19—”, did, then and there, wilfully, falsely, corruptly, and contrary to said oath, testify, in answer to the question asked him, the said F——, by the recorder of said board, “State, if you can, the date upon which the last deposit of the post exchange was made, and the amount of it”, as follows: “July 29, 19—”, which said testimony, namely, the testimony, “July 29, 19—”, was false; whereas in truth and in fact the last deposit of the said post exchange was made on August 24, 19—; and the said false testimony was known by the said F—— to be false, was material to the issue then and there being investigated by the said board of investigation, and was given with intent to deceive the said board of investigation.

116. Aiding escape of person under arrest.—This is provided for under the 22d A. G. N. and by 18 U. S. Code 246.

Charge: Aiding the escape of a person under arrest.

Elements: Section 246 of the Code reads: “Whoever shall rescue or attempt to rescue, from the custody of any officer or person lawfully assisting him, any person arrested upon a warrant or other process

issued under the provisions of any law of the United States, or shall, directly or indirectly, aid, abet, or assist any person so arrested to escape from the custody of such officer or other person, or shall harbor or conceal any person for whose arrest a warrant or process has been so issued, so as to prevent his discovery and arrest, after notice or knowledge of the fact that a warrant or process has been issued for the apprehension of such person, shall be fined not more than one thousand dollars, or imprisoned not more than six months, or both."

Lesser included offense: Conduct to the prejudice of good order and discipline.

Sample specifications:

CHARGE

ADING THE ESCAPE OF A PERSON UNDER ARREST

SPECIFICATION 1

* * *, while so serving as a patient at the U. S. naval hospital, ———, ———, having, on or about March 11, 19—, been regularly detailed and posted as a sentinel on guard over prisoners confined in the locked ward of said hospital, did, at the time and place aforesaid, furnish and provide one H—— I. J——, apprentice seaman, U. S. Navy, a prisoner in said ward, with a blue jumper, he, the said G——, well knowing that the said J—— intended to wear said jumper for the purpose of aiding him, the said J——, in making his escape from and breaking arrest from the said ward.

SPECIFICATION 2

* * *, while so serving as a prisoner in the detention prison, on board the U. S. receiving ship, navy yard, ———, ———, well knowing that one X—— Y. Z——, seaman second class, and one Z—— Y. X——, fireman first class, U. S. Navy, prisoners confined in said detention prison, intended to break arrest, did, on or about December 22, 19—, at said detention prison, knowingly and wilfully cut and assist in cutting an opening in the floor of said detention prison, for the purpose of aiding and abetting the said Z—— and the said X—— to break arrest; as a result of which the said Z—— and the said X—— did then and there escape and break arrest from said detention prison through said opening.

117. Offenses against the Postal Service.—These are provided for under the 22d A. G. N. and by chapter 8, title 18, U. S. Code. (L. R. N. A. 1337-1345.)

Charges: Any within the terms of the statutes, such as, Detaining a letter in the mail, Opening a letter in the mail, etc.

Elements: The offenses provided for in the Code are numerous. In any case of such an offense the Code should be examined.

Lesser included offense.—Conduct to the prejudice of good order and discipline.

Sample specifications:

CHARGE I

DETAINING A LETTER IN THE MAIL

SPECIFICATION

* * *, while so serving at the U. S. naval training station, ———, ———, and detailed for duty in the Navy post office at said station, having, in the execution of said duty, received into his possession a letter, posted in, and intended to be conveyed by the United States mail, and addressed and directed to “Q—— R. S——, ———, ———”, did, on or about September 9, 19—, at said station, wilfully, unlawfully, and without authority detain and delay said letter.

CHARGE II

OPENING A LETTER IN THE MAIL

SPECIFICATION

* * *, while so serving as special delivery messenger on duty at the Navy post office at the U. S. naval training station, ———, ———, having received into his possession for delivery to the addressee thereof, a special delivery letter, posted in the United States mail, and addressed and directed to “S—— T. U——, Unit 31-East, Main Hospital, ———, ———”, did, on or about August 24, 19—, at said station, wilfully, unlawfully, and without authority, open said letter.

CHARGE III

DEPOSITING AN OBSCENE LETTER IN THE MAIL

SPECIFICATION

* * *, did, on or about December 16, 19—, unlawfully and knowingly deposit, and cause to be deposited, in a post office of the United States at ———, ———, for mailing and delivery, a certain letter, to wit, an envelope which then and there bore an uncanceled United States postage stamp and the following address, to wit, “U—— V. W——, ——— St., ———. ———”, and which said

envelope then and there contained a certain obscene, lewd, and lascivious letter of an indecent character, to wit, a letter in tenor as follows: “* * *”, which said letter contained lewd, filthy, vile, and obscene language written by the said V—— to the aforesaid W——, as he, the said V——, then and there well knew.

118. Offenses against foreign and interstate commerce.—These offenses are provided for under the 22d A. G. N. and by chapter 9, title 18, U. S. Code.

Charges: Any within the terms of the statutes.

Elements: The offenses provided for in the Code are numerous. In the case of such an offense the Code should be examined. Offenses involving “white slave” traffic might arise in the service.

Lesser included offense: Scandalous conduct tending to the destruction of good morals.

Sample specification:

CHARGE

CAUSING A WOMAN TO BE TRANSPORTED IN INTERSTATE COMMERCE FOR AN IMMORAL PURPOSE

SPECIFICATION

* * *, while so serving on board the U. S. S. ——, having seduced one X—— Y. Z——, a female of previous chaste character, did, on or about November 21, 19—, while serving on board the said ship, then at ——, ——, knowingly persuade, induce, and entice the said Z—— to go from ——, ——, to ——, ——, with the intent and purpose on his, the said C——’s part that the said Z—— should engage in improper and illicit sexual relations with him, the said C——, and did, in furtherance of said purpose, then and there give the said Z—— a sum of money requisite for and intended for the purpose of procuring a ticket for her transportation from ——, ——, to ——, ——, as a passenger upon a common carrier engaged in interstate commerce, and did then and there, therein and thereby, unlawfully and knowingly cause her, the said Z——, to be transported between the places aforesaid as a passenger upon a common carrier engaged in interstate commerce for the unlawful purpose aforesaid.

119. Manslaughter.—This is provided for under the 22d A. G. N. and by 18 U. S. Code, 453 and 454. (L. R. N. A. 1349.)

Charges:

1. Voluntary manslaughter.
2. Involuntary manslaughter.

Elements: Section 453 of the Code reads: "Manslaughter is the unlawful killing of a human being without malice. It is of two kinds:

"First: *Voluntary*.—Upon a sudden quarrel or heat of passion.

"Second: *Involuntary*.—In the commission of an unlawful act not amounting to a felony, or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection."

The imprisonment authorized by the Code for voluntary manslaughter is not to exceed ten years; for involuntary, not to exceed three years.

Voluntary manslaughter is distinguished from murder by the fact that it is committed, not with malice aforethought, express or implied, but in the heat of passion or heat of blood caused by reasonable provocation. When a man, in killing another, acts under the influence of sudden passion caused by a reasonable provocation, but not in necessary defense of his life, nor in order to prevent bodily harm, the law does not excuse him because of the provocation; but it does not hold him guilty of murder.

To reduce a homicide from murder to manslaughter, the provocation must be adequate in the eye of the law, and to be so it must be so great as reasonably to excite passion and heat of blood. Passion without adequate provocation is not enough. Reasonableness is the test. The law contemplates the case of a reasonable man and requires that the provocation shall be such as might naturally induce such a man, in the anger of the moment, to commit the deed.

In involuntary manslaughter in the commission of an unlawful act the act must be *malum in se* and not *merely malum prohibitum*. Thus the driving of an automobile in slight excess of the speed limit fixed by ordinance is not the kind of unlawful act contemplated, but voluntarily engaging in an affray is such an act.

Instances of culpable negligence in performing a lawful act are: Negligently conducting small-arms target practice so that the bullets go in the direction of an inhabited house within range; pointing a pistol in fun at another and pulling the trigger, believing, but without taking reasonable precautions to ascertain, that it would not be discharged; but to constitute criminality the carelessness must be aggravated and gross, implying indifference to consequences.

Lesser included offenses: Assault; scandalous conduct tending to the destruction of good morals.

Sample specifications:

CHARGE I

VOLUNTARY MANSLAUGHTER

SPECIFICATION

* * * while so serving at the U. S. marine barracks, ———, ———, did, on or about October 23, 19—, in a house occupied by one D——— E. F———, at ———, ———, feloniously, wilfully, and without justifiable cause, assault and strike one G——— H. I———, seaman second class, U. S. Navy, with a certain blunt instrument, further description to the relator unknown, which he, the said C———, then and there had held in his hands, therein and thereby, then and there, inflicting a mortal wound in and upon the left side of the head of the said I———, of which said mortal wound so inflicted as aforesaid, the said I——— died at about 1:20 a. m. on October 31, 19—.

CHARGE II

INVOLUNTARY MANSLAUGHTER

SPECIFICATION

* * *, having in his possession a loaded rifle, and it being his duty to handle said rifle with due caution and circumspection, did, on or about April 2, 19—, on board said ship, feloniously neglect and fail to handle said rifle with due caution and circumspection in that he, the said L———, did cause said rifle to be discharged, and did assault and strike in and upon the head with a bullet fired from said rifle by means of said discharge, one M——— N. O———, fireman first class, U. S. Navy, and did therein and thereby, then and there, mortally wound the said O———, as a result of which said mortal wound so inflicted as aforesaid he, the said O———, at or about 10:30 p. m. on said date at said place, did die.

120. Assaulting and striking.—Assaulting or striking a person in the Navy is provided for under the 4th A. G. N., paragraph 3, and the 8th A. G. N. paragraph 3, and is charged as shown in sections 48 and 61. Assaulting or striking a person not in the Navy is provided for under the 22d A. G. N. and by 18 U. S. Code 455. (L. R. N. A. 1349.)

Charges:

- | | |
|-------------------------------------|---------------------------------------|
| 1. Assault with intent to commit | murder.
rape.
(name of felony). |
| 2. Assault with a dangerous weapon. | |

3. Unlawfully $\left\{ \begin{array}{l} \text{striking} \\ \text{beating} \\ \text{wounding} \end{array} \right\}$ another.

Elements: The elements are as set forth in section 48.

Lesser included offenses: Simple assault under one of the aggravated assaults; assault under striking, etc.; conduct to the prejudice of good order and discipline.

Sample specifications:

CHARGE I

ASSAULT WITH INTENT TO COMMIT MURDER

SPECIFICATION

* * * while so serving as a prisoner at the U. S. naval prison, navy yard, ———, ———, did, on or about September 5, 19—, at said prison, wilfully, maliciously, and without justifiable cause, assault and fire a shot from a pistol at one D——— E. F———, then a civilian watchman, and did therein and thereby, then and there, attempt to kill the said F———.

CHARGE II

ASSAULT WITH INTENT TO COMMIT RAPE

SPECIFICATION

* * *, did, on or about March 9, 19—, at said navy yard, feloniously, forcibly, and against her will, assault one S——— T. U———, with intent to commit the crime of rape upon her, the said U———.

121. Rape and carnal knowledge.—These are provided for under the 22d A. G. N. and by 18 U. S. Code 457 and 458. (L. R. N. A. 1349.)

Charges:

1. Rape.

2. Carnally and unlawfully knowing a female under the age of sixteen years.

Elements: Section 457 of the Code reads: "Whoever shall commit the crime of rape shall suffer death." (A court-martial can not adjudge death for this offense.)

Section 458 of the Code reads: "Whoever shall carnally and unlawfully know any female under the age of sixteen years, or shall be accessory to such carnal and unlawful knowledge before the fact, shall, for a first offense, be imprisoned not more than fifteen years, and for a subsequent offense be imprisoned not more than thirty years."

Rape is the having of unlawful carnal knowledge by a man of a woman, forcibly, where she does not consent.

Carnal knowledge is constituted by penetration, without regard to extent. Emission is not necessary. The force involved in the act of penetration alone is sufficient where there is in fact no consent. If there be actual consent, although obtained by fraud, the act is not rape. If the woman, to the knowledge of the man, is of unsound mind, or unconscious from sleep, or drink, etc., to such an extent as to be incapable of giving consent, the act is rape.

If the female is under the age of sixteen years, unlawful carnal knowledge of her completes the offense set out in section 458 and her consent is immaterial. Carnal knowledge will be unlawful in such a case unless the female is the wife of the man.

Lesser included offenses: Fornication or adultery; assault; scandalous conduct tending to the destruction of good morals.

Sample specifications:

CHARGE I

RAPE

SPECIFICATION

* * * while so serving on board the U. S. S. ———, at the U. S. navy yard, ———, ———, did, on or about July 25, 19—, in said navy yard, forcibly make an assault in and upon the body of one D—— E. F——, who was not the wife of him, the said C——, and did feloniously and against her, the said F——'s will, forcibly ravish, and carnally and unlawfully know her, the said E——.

CHARGE II

CARNALLY AND UNLAWFULLY KNOWING A FEMALE UNDER THE AGE OF SIXTEEN YEARS

SPECIFICATION

* * *, while so serving on board the U. S. S. ———, at the U. S. navy yard, ———, ———, being then a married man, did, on or about July 25, 19—, in said navy yard, carnally and unlawfully know one D—— E. F——, a female then under the age of sixteen years.

122. Maiming.—This is provided for under the 22d A. G. N. and by 18 U. S. Code 462. (L. R. N. A. 1350.)

Charge: Maiming.

Elements: Section 462 of the Code reads: "Whoever, with intent to maim or disfigure, shall cut, bite, or slit the nose, ear, or lip, or cut out

or disable the tongue, or put out or destroy an eye, or cut off or disable a limb or any member of another person; or whoever, with like intent, shall throw or pour upon another person, any scalding hot water, vitriol, or other corrosive acid, or caustic substance whatever, shall be fined not more than one thousand dollars or imprisoned not more than seven years, or both."

Lesser included offense: Scandalous conduct tending to the destruction of good morals.

Sample specification:

CHARGE

MAIMING

SPECIFICATION

* * * while so serving on board the U. S. S. ———, did, on or about May 28, 19—, on board said ship, assault and with intent to maim and disfigure one D—— E. F——, fireman second class, U. S. Navy, unlawfully and maliciously bite and thereby cut off and disable the right forefinger of the said F——.

123. Robbery.—This is provided for under the 22d A. G. N. and by 18 U. S. Code, 463. (L. R. N. A. 1350.)

Charge: Robbery.

Elements: Section 463 of the Code reads: "Whoever, by force and violence, or by putting in fear, shall feloniously take from the person or presence of another anything of value, shall be imprisoned not more than fifteen years."

Robbery is the taking, with intent to steal, of the personal property of another, from his person or in his presence, against his will, by violence or intimidation. The taking, although wrongful and violent, does not amount to robbery if it was in good faith under a claim of right to the specific thing taken, but the claim of right must not be a mere pretext covering an intent to steal.

Lesser included offenses: Theft; assault; scandalous conduct tending to the destruction of good morals.

Sample specifications:

CHARGE

ROBBERY

SPECIFICATION 1

* * * while so serving on board the U. S. S. ———, did, on or about July 15, 19—, in the city of ———, ———, being armed with certain deadly weapons, to wit, a revolver and a blackjack, feloniously

make an assault upon one D—— E. F——, a civilian, living in said city and State, and did, then and there, by means of and use of said revolver and said blackjack, feloniously put the said F—— in bodily fear and danger of his life, and did, then and there, by so putting the said F—— in fear, feloniously rob, take, steal, and carry away from the person and against the will of the said F—— the sum of about one hundred fifty dollars (\$150.00) in lawful money of the United States, the property of the said F——, and did then and there appropriate the same to his own use.

SPECIFICATION 2

* * *, did, on or about June 30, 19—, at ——, ——, with force and violence, feloniously make an assault upon one J—— K. L——, and did then and there against the will of and by violence to the person of the said L——, feloniously rob, take, steal, and carry away from the person of the said L—— the sum of about twelve dollars (\$12.00) in lawful money of the United States, the property of the said L——, and did then and there appropriate the same to his own use.

124. Arson, etc.—This is provided for under the 22d A. G. N. and by 18 U. S. Code, 464 and 465. (L. R. N. A. 1350.)

Charges:

1. Arson.

2. Maliciously setting fire to an arsenal (armory, etc.).

Elements: Section 464 of the Code reads: "Whoever shall wilfully and maliciously set fire to, burn, or attempt to burn, or by means of a dangerous explosive destroy or attempt to destroy, any dwelling house, or any store, barn, stable, or other building, parcel of a dwelling house, shall be imprisoned not more than twenty years."

Section 465 of the Code reads: "Whoever shall maliciously set fire to, burn, or attempt to burn, or by any means destroy or injure, or attempt to destroy or injure, any arsenal, armory, magazine, ropewalk, ship-house, warehouse, blockhouse, or barrack, or any storehouse, barn, or stable, not parcel of a dwelling house, or any other building not mentioned in the section last preceding, or any vessel built, building, or undergoing repair, or any lighthouse, or beacon, or any machinery, timber, cables, rigging, or other materials or appliances for building, repairing, or fitting out vessels, or any pile of wood, boards, or other lumber, or any military, naval, or victualing stores, arms, or other munitions of war, shall be fined not more than five thousand dollars and imprisoned not more than twenty years."

The offense denounced by section 464 of the Code is substantially the common law crime of arson, and should be so charged. But the house must be the dwelling house of another, as the offense is against the habitation, not against property as such.

A shop or store is not the subject of arson unless occupied as a dwelling. It is not arson to burn a house that has never been occupied or which has been permanently abandoned; but it is arson if the occupant is merely temporarily absent.

The burning must be wilful and malicious, which excludes a burning arising from negligence or mischance, unless the accused was engaged in the commission of a felony. Where a man, who, in setting fire to his own house to get the insurance, burns his neighbor's, he is guilty of arson in burning the neighbor's house.

The offense denounced by section 465 of the Code is broader than common law arson. Care should be taken to charge the offense in the terms of this section unless the essential elements of arson are present.

Lesser included offense: Scandalous conduct tending to the destruction of good morals.

Sample specifications:

CHARGE I

ARSON

SPECIFICATION

* * * while so serving on board the U. S. S. ———, did, on or about March 13, 19—, in the city of ———, ———, wilfully, maliciously, and feloniously set fire to and burn the dwelling house of one D——— E. F———.

CHARGE II

MALICIOUSLY SETTING FIRE TO A BARN

SPECIFICATION

* * *, did, on or about March 13, 19—, in the city of ———, ———, wilfully, maliciously, and feloniously set fire to and burn a barn located near the intersection of ——— and ——— Streets, the property of one D——— E. F———.

125. Receiving stolen goods.—This is provided for under the 22d A. G. N. and by 18 U. S. Code 101, 467. (L. R. N. A. 1328 1350.) (See also 18 U. S. Code 317 in the matter of articles stolen from the mail, L. R. N. A. 1338.)

Charges:

1. Receiving stolen public money.
2. Receiving stolen goods.

Elements: Section 101 of the Code reads: "Whoever shall receive, conceal, or aid in concealing, or shall have or retain in his possession with intent to convert to his own use or gain, any money, property, record, voucher, or valuable thing whatever, of the moneys, goods, chattels, records, or property of the United States, which has theretofore been embezzled, stolen, or purloined by any other person, knowing the same to have been so embezzled, stolen, or purloined, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both; and such person may be tried either before or after the conviction of the principal offender." Section 467 of the Code reads: "Whoever shall buy, receive, or conceal any money, goods, bank notes, or other thing which may be the subject of larceny, which has been feloniously taken, stolen, or embezzled, from any other person, knowing the same to have been so taken, stolen, or embezzled, shall be fined not more than one thousand dollars, and imprisoned not more than three years; and such person may be tried either before or after the conviction of the principal offender."

Lesser included offense: Scandalous conduct tending to the destruction of good morals.

Sample specifications:

CHARGE I

RECEIVING STOLEN PUBLIC MONEY

SPECIFICATION

* * * while so serving on board the U. S. S. ———, did, on or about November 21, 19—, in the city of ———, ———, knowingly, wilfully, and feloniously, receive for his own use from one B—— C. D——, yeoman first class, U. S. Navy, lawful money of the United States of the amount of about one hundred dollars (\$100.00), property of the United States, which said money the said C—— then and there well knew had lately before been stolen on board said ship by the said D—— from the United States.

CHARGE II

RECEIVING STOLEN GOODS

SPECIFICATION

* * *, did, on or about December 21, 19—, on board said ship, knowingly, wilfully, and feloniously receive and have in his posses-

sion one gold watch of the value of about thirty-five dollars (\$35.00), and one gold chain, of the value of about seven dollars (\$7.00), both the property of one D—— E. F——, seaman first class, U. S. Navy, which said articles had then lately before by some person unknown been feloniously stolen from the said F——, the said E—— then and there well knowing said articles to have been feloniously stolen.

126. Circulating obscene literature, etc.—This is provided for under the 22d A. G. N. and by 18 U. S. Code 512. (L. R. N. A. 1353.)

Charges: Any within the terms of the statute.

Elements: Section 512 of the Code reads: "Whoever shall sell, lend, give away, or in any manner exhibit, or offer to sell, lend, give away, or in any manner exhibit, or shall otherwise publish or offer to publish in any manner, or shall have in his possession for any such purpose, any obscene book, pamphlet, paper, writing, advertisement, circular, print, picture, drawing, or other representation, figure, or image on or of paper or other material, or any cast, instrument, or other article of an immoral nature, or any drug or medicine, or any article whatever, for the prevention of conception, or for causing unlawful abortion, or shall advertise the same for sale, or shall write or print, or cause to be written or printed, any card, circular, book, pamphlet, advertisement, or notice of any kind, stating when, where, how, or of whom, or by what means, any of the articles above mentioned can be purchased or obtained, or shall manufacture, draw, or print, or in anywise make any of such articles, shall be fined not more than two thousand dollars or imprisoned not more than five years, or both."

Lesser included offense: Conduct to the prejudice of good order and discipline.

Sample specification:

CHARGE

EXHIBITING AN OBSCENE PHOTOGRAPH

SPECIFICATION

* * * while so serving on board the U. S. S. ——, did, on or about November 17, 19—, on board said ship, exhibit to one X—— Y. Z——, seaman second class, U. S. Navy, and to other enlisted men in the U. S. Navy, by names to the relator unknown, attached to said ship, an indecent, lewd, obscene, and lascivious photograph, the same being a photograph of the said C—— together with a Negro woman, by name to the relator unknown, depicting the said C—— and the said Negro woman both nude and in a suggestive and immoral pose.

127. Polygamy, unlawful cohabitation, adultery, and fornication.—These are provided for under the 22d A. G. N. and by 18 U. S. Code 513, 514, 516, 518.

Charges:

1. Polygamy.
2. Unlawful cohabitation.
3. Adultery.
4. Fornication.

Elements: Section 513 of the Code reads: "Every person who has a husband or wife living, who marries another, whether married or single, and any man who simultaneously, or on the same day, marries more than one woman, is guilty of polygamy, and shall be fined not more than \$500 and imprisoned not more than five years. This section shall not extend to any person by reason of any former marriage whose husband or wife by such marriage shall have been absent for five successive years, and is not known to such person to be living, and is believed by such person to be dead, nor to any person by reason of any former marriage which shall have been dissolved by a valid decree of a competent court, nor to any person by reason of any former marriage which shall have been pronounced void by a valid decree of a competent court, on the ground of nullity of the marriage contract."

Section 514 of the Code reads: "If any male person cohabits with more than one woman, he shall be fined not more than \$300, or imprisoned not more than six months, or both."

Section 516 of the Code reads: "Whoever shall commit adultery shall be imprisoned not more than three years; and when the act is committed between a married woman and a man who is unmarried, both parties to such act shall be deemed guilty of adultery; and when such act is committed between a married man and a woman who is unmarried, the man shall be deemed guilty of adultery."

Section 518 of the Code reads: "If any unmarried man or woman commits fornication, each shall be fined not more than \$100, or imprisoned not more than six months."

The weight of authority is to the effect that the crime of unlawful cohabitation, as defined in the statute, is made out without proof of sexual intercourse, and that proof of nonintercourse is not a defense. A man "cohabits" with more than one woman when, by his language or conduct, or both, he holds out to the world two or more women as his wives, and when he lives in the same house with them and eats at the table of each a portion of the time, although he may not occupy the same bed, sleep in the same room, or actually have sexual intercourse with either of them.

Adultery comprises voluntary sexual intercourse.

Fornication is unlawful carnal knowledge by an unmarried person of another.

Lesser included offense: Scandalous conduct tending to the destruction of good morals.

Sample specifications:

CHARGE I

POLYGAMY

SPECIFICATION

In that A—— B. C——, alias D—— E. F——, chief gunner, U. S. Navy, while so serving at the U. S. navy yard, ——, ——, having theretofore married and had for his wife one S—— T——, did, on or about February 16, 19—, in the city of ——, ——, under the name of D—— E. F——, while' he was so married, unlawfully and feloniously marry and take to wife one X—— Y——, said S—— T—— being then alive, as he, the said C——, alias F——, then and there, well knew.

CHARGE II

UNLAWFUL COHABITATION

SPECIFICATION

* * *, while so serving at the U. S. navy yard, ——, ——, did, during the period of about seven months beginning on or about July 15, 19—, in the city of ——, ——, unlawfully cohabit and live with more than one woman, to wit, one W—— V—— and one U—— R——.

CHARGE III

ADULTERY

SPECIFICATION 1

* * *, did, on or about August 7, 19—, near the town of ——, ——, commit adultery by having voluntary sexual intercourse with one O—— P. Q——, the lawful wife of S—— R. Q——.

SPECIFICATION 2

* * *, being then a married man, did, on or about August 7, 19—, near the town of ——, ——, commit adultery by having voluntary sexual intercourse with a woman not his wife, to wit, one O—— P. Q——.

CHARGE IV

FORNICATION

SPECIFICATION

* * *, being then an unmarried man, did, on or about August 7, 19—, near the town of ———, ———, commit fornication by having carnal knowledge of a woman, by name to the relator unknown.

128. Offenses against the narcotic law.—These are provided for under the 22d A. G. N. and by the act of December 17, 1914, as amended by the acts of February 24, 1919, and February 26, 1926, set out in 26 U. S. Code, 1044 (a), 1047 (b) (1), 1383, 1384, 1387–1388 (a) (b) (c).

Charge: Any within the terms of the act.

Elements: The following provisions of the act are the most important for the naval service:

Sections 1383, 1384. Every person who imports, manufactures, produces, compounds, sells, deals in, dispenses, or gives away opium or coca leaves or any compound, manufacture, salt, derivative, or preparation thereof, shall register with the collector of internal revenue of the district his name or style, place of business and place or places where such business is to be carried on, and pay the special taxes hereinafter provided; * * *. There follow provisions excepting certain officers of the United States, and certain others lawfully purchasing for hospitals, etc.

Section 1387–1388 (a). It shall be unlawful for any person required to register under the provisions of this act to import, manufacture, produce, compound, sell, deal in, dispense, distribute, administer, or give away any of the aforesaid drugs without having registered and paid the special tax as imposed by this section.

Section 1044 (a). It shall be unlawful for any person to sell, barter, exchange, or give away any of the aforesaid drugs except in pursuance of a written order * * * on a form to be issued * * * by the Commissioner.

Sections 1387–1388 (b). It shall be unlawful for any person who shall not have registered * * * to send, ship, carry, or deliver any of the aforesaid drugs from any State or Territory or the District of Columbia, or any insular possession of the United States, to any person in any other State or Territory or the District of Columbia, or any insular possession of the United States.

Section 1387–1388 (c). It shall be unlawful for any person who has not registered under the provisions of this act, and who has not paid the special tax provided for by this act, to have in his possession or under his control any of the aforesaid drugs; and such posses-

sion or control shall be presumptive evidence of a violation of this section and also of a violation of the provisions of section 1 of this act.

Section 1047 (b) (1). Any person who violates or fails to comply with any of the requirements of this act shall on conviction be fined not more than \$2,000 or be imprisoned not more than five years, or both, in the discretion of the court.

Sample specifications:

CHARGE I

UNLAWFULLY GIVING AWAY A DERIVATIVE OF OPIUM

SPECIFICATION

* * *, while so serving at the U. S. naval hospital, ———, ———, did, on or about September 12, 19—, in or near the city of ———, ———, not being registered under the provisions of the act of Congress approved December 17, 1914, as amended by the acts of Congress approved February 24, 1919, and February 26, 1926, knowingly and unlawfully give to one J—— K. L——, a civilian, as a gift, heroin, exact quantity thereof to the relator unknown.

CHARGE II

UNLAWFULLY HAVING A DERIVATIVE OF OPIUM IN HIS POSSESSION

SPECIFICATION (39)

* * *, being a person who (produces) (imports) (manufactures) (compounds) (deals in) (dispenses) (sells) (distributes) (gives away) heroin, did, on or about September 12, 19—, in or near the city of ———, ———, knowingly and unlawfully have in his possession and under his control heroin, in quantity about five grams, he, the said C——, at the time and place aforesaid, not being registered under the provisions of the act of Congress approved December 17, 1914, as amended by the acts of Congress approved February 24, 1919, and February 26, 1926.

(39) The Supreme Court of the United States in the case of *United States v. Jin Fuey Moy* (241 U. S. 394), held that "any person not registered" in section 8 (secs. 1387-1388 (c), title 26, U. S. C.), of the Narcotic Act, "can not be taken to mean any person in the United States but must be taken to refer to the class with which the statute undertakes to deal—the persons who are required to register by section 1." Care must therefore be taken to designate in a specification alleging unlawful possession of narcotics in violation of the Narcotic Act the particular class of persons named in section 1 of the act to which the accused belongs.

129. Offenses against revenue acts.—These are provided for under the 22d A. G. N. by the twenty-first amendment to the Constitution, and titles 26 and 27 of the U. S. Code.

Charge: Any within the terms of the statute.

Elements: Section 2 of the twenty-first amendment reads:

“The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.”

27 U. S. Code, 123, reads as follows:

“Whoever shall order, purchase, or cause intoxicating liquors to be transported in interstate commerce, except for scientific, sacramental, medicinal, and mechanical purposes, into any State, Territory, or the District of Columbia, the laws of which prohibit the manufacture or sale therein of intoxicating liquors for beverage purposes, shall be fined not more than \$1,000 or imprisoned not more than six months, or both, and for any subsequent offense shall be imprisoned not more than one year.”

26 U. S. Code, 1162, reads in part as follows:

“Every person having in his possession or custody, or under his control, any still or distilling apparatus set up, shall register the same with the collector of the district in which it is, by subscribing and filing with him duplicate statements, in writing, setting forth the particular place where such still or distilling apparatus is set up, the kind of still and its cubic contents, the owner thereof, his place of residence, and the purpose for which said still or distilling apparatus has been or is intended to be used * * *.”

26 U. S. Code, 1170, reads in part as follows:

“No person shall use any still, boiler, or other vessel, for the purpose of distilling, in any dwelling house, or in any shed, yard, or inclosure connected with any dwelling house, or on board of any vessel or boat, or in any building, or on any premises where beer, lager-beer, ale, porter, or other fermented liquors, vinegar, or ether, are manufactured or produced, or where sugars or sirups are refined, or where liquors of any description are retailed, or where any other business is carried on; or within six hundred feet in a direct line of any premises authorized to be used for rectifying; * * * and every person who does any of the acts prohibited by this section, or aids or assists therein, or causes or procures the same to be done * * *.”

Sample specifications.

CHARGE I

UNLAWFUL TRANSPORTATION OF INTOXICATING LIQUOR IN INTERSTATE COMMERCE

SPECIFICATION

* * *, having placed or caused to be placed in an automobile, to wit, a Ford sedan, about five gallons of intoxicating liquor, to wit, whiskey, did, on or about April 26, 19—, wilfully and unlawfully, and not for scientific, sacramental, medicinal, or mechanical purposes, transport and cause to be transported said liquor in said automobile in interstate commerce into the State of ———, the laws of which State prohibit the manufacture or sale therein of such intoxicating liquor for beverage purposes.

CHARGE II

UNLAWFUL USE OF A DISTILLING APPARATUS

SPECIFICATION

* * *, did, on or about April 25, 19—, in building number forty-five at said navy yard, wilfully, knowingly, and unlawfully use an apparatus known as a still for the purpose of distilling intoxicating liquor.

CHAPTER III

RULES OF EVIDENCE—ATTENDANCE AND EXAMINATION OF WITNESSES

141. The provisions of this chapter apply to all courts and boards, except where manifestly limited to one kind specified. The term "president" shall be read "senior member" when applicable; the term "judge advocate" also, in general, includes a recorder.

142. Evidence defined.—Evidence is that which tends to prove or disprove any matter in question, or to influence the belief respecting it. It includes all the means by which any alleged matter of fact, the truth of which is submitted to investigation, is established or disproved; also that which is legally submitted to a jury, to enable them to decide upon the questions in dispute, or the issue, as pointed out by the pleadings, and distinguished from all comment and argument.

143. Direct and circumstantial evidence.—Direct evidence tends directly to establish a fact in issue; circumstantial evidence tends to establish a fact from which the fact in issue can be inferred.

144. Evidential value of circumstantial evidence.—Circumstantial evidence is not an inferior or secondary kind of evidence. It is frequently better than direct evidence. Its weakness lies in the fact that circumstances may be very strong against an innocent man. In a case depending on circumstantial evidence, the court, in order to convict, must find the circumstances to be satisfactorily proved as facts, and must also find that these facts clearly and unequivocally imply the guilt of the accused and can not reasonably be reconciled with any hypotheses of his innocence.

145. Illustrations of good and bad circumstantial evidence.—The accused is charged with stealing clothes from the locker of another man. The following circumstances would not be admissible as circumstantial evidence by the prosecution:

- (1) The accused is very much disliked by his shipmates.
- (2) A number of thefts have taken place on board the ship, and the general belief in the ship is that he was connected with them.
- (3) He was tried once before for larceny of clothes and was convicted.

(4) He is suspected of being a deserter from a foreign navy.

(5) He belongs to a race or enlisted in a locality that does not entertain very strict notions of right and wrong as to the manner of acquiring possession of property.

But the following series of circumstances should be admitted in evidence:

(1) The clothes were taken while the owner was at drill, and there was no one known to have been around the locker.

(2) The accused was not at drill, but was detailed as mess cook.

(3) He was absent from his duty as mess cook a short while during the time when the clothes disappeared.

(4) One of the articles stolen was found in the locker of the accused.

(5) The accused was known to be without money the day before the larceny, and that evening left the ship with a bundle under his arm and was seen to enter a certain house, and the same night had money in his possession.

(6) Upon the house being searched next day most of the missing clothes were found there.

(7) The person found in the house identified the accused as the one from whom he had purchased the missing clothes.

146. Rules of evidence governing naval courts and boards, how determined.—From experience the courts have determined that certain kinds of evidence are too untrustworthy even to be considered. Rules of evidence have therefore been developed excluding such kinds of evidence. No statute, other than the twenty-ninth, sixtieth, and sixty-eighth articles for the government of the Navy, lays down rules of evidence to govern naval courts and boards. The rules governing such are made by the Navy Department and are published herein and in court-martial orders. These rules, in so far as the naval service is concerned, have the force of law and are binding upon naval courts and boards. If a question of evidence which can not be determined by a reference to the above rules confronts a court, it should then look to the rules of evidence applied by the Federal courts and follow them if applicable.

When a board of investigation is not required by its precept to take testimony under oath, the record of such board can not be introduced as evidence in subsequent proceedings, except as provided in section 222. Therefore, a wider latitude is permissible and the rules of evidence need not be strictly observed; the function of such a board being solely to obtain information for the convening and higher authority. The same rule applies to an investigation not under oath made by an investigating officer or clerk.

147. Members must determine according to the evidence.—The oath taken by members of general and summary courts-martial requires them to try and determine “according to the evidence” the matter before them; that taken by the members of a court of inquiry requires them to examine and inquire “according to the evidence” the matter before them. A deck court, although the officer does not take such an oath, will also determine the matter before it solely on the evidence in the case, and no evidence should be admitted before a deck court that is not also admissible before a general or summary court-martial. Every item of the evidence must be introduced in open court, and it would be seriously irregular and improper for any member of the court to convey to other members, or himself to consider, any personal information that he possessed as to the merits of the case or the character of the accused.

148. The issues.—A court-martial is a criminal court. In every criminal case the burden is on the prosecution to prove, by relevant evidence, (a) that the act charged was really committed, (b) that the accused committed it, and (c) that the accused had the requisite criminal intent at the time. These three facts broadly constitute the issues in the case. Incidental issues will be formed by the necessity for proof of the essentials of an offense. Not only the allegations set out in the charges and specifications, but the component parts of such allegations as well, raise the issues to be decided. For instance, in a case of larceny, where it is charged that the accused “did feloniously take, steal, and carry away” certain articles of value, the component parts of the allegation not specifically set out are that such articles were taken (a) fraudulently and (b) with felonious intent of permanently depriving the owner of them.

149. Proof that the act was really committed.—*Corpus delicti*, literally “the body or substance of the crime”, may be defined in its primary sense as the fact that a crime has actually been committed. It is the general fact without which there could be no guilt, either in the accused or in any one else, and must be established before any one can be convicted of the perpetration of the alleged crime; otherwise, the accused might be convicted of murder, for example, when the person alleged to have been murdered was still alive, or of theft when the owner had not lost the goods, or of arson when the house had not been burned.

Usually the *corpus delicti* is evidenced before any other main fact, but this is not the mandatory rule. The court may determine the order of evidence on the general principles otherwise prevailing. Thus, in some offenses such as sodomy, uttering a forged instrument knowing it to be false, etc., the question whether a crime has been

committed is frequently so intimately connected with the question whether or not the accused is guilty of the crime charged that there can be no separation in the evidence, the proof of the *corpus delicti* depending entirely upon the acts and intent of the accused. Accordingly in such cases evidence of acts and intent, if admissible at all, are admissible at any stage of the proceedings upon the trial. The order of proof may also be varied for the convenience of the witnesses or the court.

150. Proof that the accused committed the act.—There must first be proof that the person in court as the accused is the person named in the charges and specifications. This may be established from his descriptive list or by testimony of those who know the accused by name. It must then be clearly and affirmatively shown that the person in court as the accused is the person who did the act specified and to which the testimony of the witness will refer.

151. Proof that the accused had the requisite criminal intent at the time.—In respect to the element of intent, crimes are distinguished as follows: Those in which a distinct and specific intent, independent of the mere act, is essential to constitute the offense, as murder, larceny, burglary, desertion, and mutiny, etc.; and those in which the act is the principal feature, the existence of the wrongful intent being simply inferable therefrom, as rape, sleeping on watch, drunkenness, neglect of duty, etc. In cases of the former class the characteristic intent must be established affirmatively as a separate fact; in the latter class of cases it is only necessary to prove the unlawful act.

152. Same: Drunkenness as showing absence of intent.—It is a general rule of law that voluntary drunkenness is not an *excuse* for crime committed in that condition. But the question whether or not the accused was drunk at the time of the commission of the criminal act may be material as going to indicate what species or kind of offense was actually committed. Thus, there are crimes that can be consummated only where a peculiar and distinctive intent or a conscious deliberation or premeditation has concurred with the act which could not well be possessed or entertained by an intoxicated person. In such cases evidence of the drunken condition of the party at the time of the commission of the alleged crime is held admissible, *not to excuse or extenuate the act as such*, but to aid in determining whether, in view of the state of his mind, such act amounted to the specific crime charged or which of two or more crimes similar but distinguished in degree it really was in law. Thus, in cases of such offenses as larceny, robbery, burglary, and passing counterfeit money, which require for their commission a

certain specific intent, evidence of drunkenness is admissible as indicating whether the offender was capable of entertaining this intent or whether his act was anything more than a mere battery, trespass, or mistake. So, upon an indictment for murder, testimony as to the drunkenness of the accused at the time of the killing may ordinarily be admitted as indicating a mental excitement, confusion, or unconsciousness incompatible under the circumstances of the case with premeditation or a deliberate intent to take life and as reducing the crime to the grade of manslaughter. On the other hand, where, to constitute the legal crime, there is required no peculiar intent—no wrongful intent other than that inferable from the act itself—as in cases of assault and battery, rape, or arson, evidence that the offender was intoxicated would, strictly, not be admissible in defense.

153. Same: Negligence supplying intent.—The degree of care and caution to avoid mischief required to save from criminal responsibility, for instance, one who accidentally kills another, is that which a man of ordinary prudence would have exercised under like circumstances; mere slight negligence, with no intent to do harm, under such circumstances that it could not reasonably be supposed that injury would result, does not furnish a foundation for criminal responsibility for a resulting death. The degree of negligence necessary to support criminal liability must be gross and culpable.

154. Burden of proof.—The law presumes every man innocent of crime. The prosecution has in each case the burden of overcoming this presumption. The accused's guilt must be established by substantive proof. By the plea of not guilty every element of the crime specified is debated, and the prosecution must affirmatively prove it, even though it be a matter of negative averment in the specification, proof of which is peculiarly within the knowledge of the accused. The burden of proof *never shifts to the accused*. It is immaterial that the accused sets up a defense by way of justification or excuse, as insanity, or an alibi.

155. Same: In collateral issues.—In collateral issues arising in the course of the trial as to the competency of witnesses, the admissibility of testimony, and the like, the burden of proof rests upon the party who alleges incompetency or objects to the admission of particular testimony.

156. Prima facie case.—Prima facie and sufficient evidence are synonymous. A prima facie case is one that is established by sufficient evidence and can be overthrown only by rebutting evidence adduced on the other side; the amount of evidence that would be sufficient to counterbalance the general presumption of innocence, and

warrant a conviction, if not encountered and controlled by evidence tending to contradict it, and render it improbable, or to prove facts inconsistent with it.

157. Burden of proceeding.—A *prima facie* case has no effect on the burden of proof. It shifts the burden of going forward or of proceeding, because if the accused does nothing he will be convicted. The burden of proceeding is sometimes loosely called the burden of proof, but is really something very different. The question for the court at the end of the trial remains, "Has the judge advocate proved the guilt of the accused beyond a reasonable doubt?" and not, "Has the accused proved his innocence?"

158. Proof beyond a reasonable doubt.—If there is a reasonable doubt as to the guilt of the accused, he must be acquitted. If there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree on which there is no such doubt. In making its finding the court must strictly observe the rule that it must reach its conclusion solely from the evidence adduced. It is not necessary that each particular fact advanced by the prosecution should be proved beyond a reasonable doubt; it is sufficient to warrant conviction if, on the whole evidence, the court is satisfied beyond such doubt that accused is guilty.

159. Reasonable doubt defined.—By reasonable doubt is meant an honest, substantial misgiving generated by insufficiency of proof. It is not a captious doubt, not a doubt suggested by the ingenuity of counsel or court and unwarranted by the testimony, nor is it a doubt born of a merciful inclination to permit the accused to escape conviction nor prompted by sympathy for him or those connected with him. Proof beyond a reasonable doubt is not proof to a mathematical demonstration. It is not proof beyond the possibility of a mistake. A reasonable doubt is a doubt based on reason, and which is reasonable in view of all the evidence. And if, after an impartial comparison and consideration of all the evidence, one can candidly say that one is not satisfied of the defendant's guilt, he has a reasonable doubt; but if, after such impartial comparison and consideration of all the evidence, one can truthfully say that one has an abiding conviction of the defendant's guilt such as one would be willing to act upon in the more weighty and important matters relating to one's own affairs, he has no reasonable doubt. A moral certainty of guilt persuaded by the proof calls for conviction. When such has been established, a court can no more properly acquit than could it convict when there has been an insufficiency of proof.

160. Distinction between relevance and competence.—Evidence to be admissible must be satisfactory from two standpoints: First, the stand-

point of subject matter, and, second, that of form. Relevant evidence is evidence the subject matter of which relates to the issues, and in a court martial this means that to be admissible the evidence must tend to prove or disprove the guilt of the accused. The relationship of the evidence to the question of the guilt of the accused must be sufficiently close to warrant consuming the court's time in hearing it. Competent evidence is evidence complying with the rules of law as to form, irrespective of subject matter; it is evidence offered in a form that the courts will admit.

161. Degree of relevance required.—This depends largely on each particular case. Roughly the principle may be stated: Those matters are admissible which are not trivial and which are more likely to help toward the correct decision of issues of fact than to mislead. Matters which have only a slight or conjectural bearing on the issues are inadmissible, especially if such as may create prejudice. A close relation between the evidence and the issues should be at all times enforced.

162. Evidence of similar facts.—When the analogy is so close that differences are practically eliminated, evidence of similar facts may be allowed. If A were arrested for breaking the speed limit, evidence that he had on that same day broken the speed limit at a point a mile away would be inadmissible. But evidence that he was going fifty miles an hour at another point close to the one in question a moment before would be admissible if there were no crossing or obstruction between the two points. There is a reasonable probability that the speed was maintained. Thus, also, in a case involving drunkenness it can not be shown that the accused was often drunk at prior times (except in rebuttal of the accused's evidence to the contrary), but it may be shown that he had been drinking a short time before that specified.

163. Evidence of similar acts to show intent or motive.—In cases requiring a specific intent evidence of similar acts previously done by the accused may be admissible to show the intent or motive with which the other act was done. In an English case a man was being tried for pawning an imitation diamond as genuine. Evidence that he had shortly before tried to pawn other false articles was admitted. The rule set forth in this section is an exception to the general rule that a distinct crime, unconnected with that alleged in the specification, can not be given in evidence against the accused. It is not proper to raise a presumption of guilt on the ground that, having committed one crime, the depravity it exhibits makes it likely that he would commit another. But where the felonious intent or

guilty knowledge is a material part of the crime, as in cases of forgery, uttering false notes, fraud, etc., evidence is admissible of similar acts of the accused at different prior times, if such acts tend to prove the existence of such guilty knowledge or felonious intent. Crimes involving illicit sexual intercourse either in incest, adultery, or rape, at prior times, constitute another exception to the general rule.

164. Character evidence.—Character evidence is of two types, namely, (a) that introduced *before* the finding and tending to prove the guilt or innocence of the accused and (b) that which is introduced *after* the finding and which is, strictly speaking, not evidence but is more properly termed matter in mitigation.

Referring to (a), the accused may introduce evidence of his good character but this must be confined to the accused's *general reputation* in the community in which he is known and must relate to those traits which are brought into question by the charges under which he is being tried. The prosecution may not evidence the doing of the act charged by invoking the accused's bad character but, the accused having first offered evidence of his good character, the prosecution may then offer evidence in rebuttal under the same limitations as to any other kind of evidence.

Matter in mitigation, referred to in (b) above, has for its purpose the lessening of the punishment to be assigned by the court or the furnishing of grounds for a recommendation to clemency. As thus offered it has a wide latitude and is not, as in (a), limited to the general good character of the accused nor to the nature of the charges. Such matter may include particular acts of good conduct, bravery, etc., and may exhibit the reputation or record of the accused in the service for efficiency, fidelity, subordination, temperance, courage, or any of the other traits that go to make a good officer or enlisted man.

165. Matter admissible on behalf of accused after finding.—*After* the court has arrived at its finding, following either a plea of guilty or not guilty, the accused may introduce (1) matter in mitigation of the punishment, which is described in the preceding section, and (2) matter in extenuation of the offense. This latter may properly explain the circumstances surrounding the commission of the offense, including the reasons that actuated the accused, but not extending to a legal justification. If matter purporting to be in extenuation or mitigation is introduced after a plea of guilty and is found to controvert any element of the offense, the court should proceed as set forth in section 417. The accused may also at this time introduce matter from his service record and testimony as to past character.

166. **Matter in aggravation.**—A plea of guilty does not necessarily exclude testimony for the prosecution. The court has discretionary power as to the punishment to be awarded. It is proper that it should have full knowledge of all the circumstances attending the offense. Therefore, when the judge advocate has knowledge that the offense as actually committed was of a more grave nature than appears merely on the face of the specification it is his duty to offer such testimony as tends to show the aggravating nature of the offense, but this should not relate to a separate and distinct offense. Matter of this type is introduced after the finding.

167. **Opposite party may cross-examine.**—After matter in extenuation, aggravation, or mitigation has been introduced the judge advocate or accused has the right to cross-examine the witness and offer evidence in rebuttal.

168. **Hearsay in general inadmissible.**—Hearsay evidence is second-hand evidence. It is evidence not of what a witness knows himself but that rests, in part at least, upon the credibility of others. The term may be used with reference to that which is written as well as that which is spoken. The general rule is that hearsay evidence is not admissible.

169. **Why hearsay evidence is objectionable.**—Hearsay evidence is objectionable, first, because it is not original evidence; second, the real witness is not testifying in court under the sanction of an oath; and, third, the accused has no opportunity to be confronted with the witness against him or to exercise his right of cross-examination.

170. **Hearsay evidence not to be confused with literal acceptance of word "hearsay."**—It does not necessarily follow that all evidence in respect to what a witness had "heard" is hearsay. Such evidence may constitute original facts, directly bearing on the issue, and as such be original. For example, when an accused is charged with having spoken certain words, the testimony of a witness to the effect that he had heard the accused speak the words in question is original and not hearsay evidence. So also a writing may be "hearsay" if offered to prove the fact stated therein, and yet be admissible if offered for another purpose. The distinction must be clearly kept in mind.

171. **Illustrations of hearsay.**—(1) A man is being tried for desertion. A is able to testify that B told A that the accused told B that he (the accused) intended to desert at the first opportunity.

(2) A man is being tried for larceny of clothes from a locker. A is able to testify that B told A that he (B) about the time the clothes were stolen saw the accused leave the quarters with a bundle resembling clothes. Such testimony from A would be hearsay and would be inadmissible.

(8) A man is being tried for selling clothing. Policeman A is able to testify that, while on duty as policeman, he saw the accused with a bundle under his arm go into a shop; that he (the policeman) entered the shop and the accused ran away and the policeman was unable to catch him. The policeman the next day asked the proprietor of the shop what the accused was doing there, and the proprietor replied that the accused sold him some clothes issued by the Government and that he paid the accused \$2.50 for them. The testimony of the policeman as to the reply of the proprietor would be hearsay and would be inadmissible. The fact that the policeman was acting in the line of his duty at the time the proprietor made the statement would not render the evidence admissible.

In the foregoing instances the fact that the accused said he intended to desert, that the accused left the quarters with a bundle, and that the accused sold the proprietor the clothes, constitute most important evidence and can be proved in the first two instances by B, and in the third instance by the proprietor, but they can not be proved by hearsay evidence.

172. Hearsay is not admissible merely because made officially.—If evidence is hearsay the fact that it was made to an officer in the course of an official investigation does not make it admissible. For instance, in illustration (1) of the preceding section, if B had made his statement to Captain C in the course of an official investigation by Captain C, the statement would still be hearsay and inadmissible.

Official statement and opinion as to either guilt or innocence expressed by an officer, as, for instance, a commanding officer, in an indorsement, is not admissible in evidence by reason of its official character or the rank or position of the officer making it, as it would be hearsay. Nor is such a statement or opinion evidence because it is among papers referred to the judge advocate with the charges. It would be irregular to permit such statements or opinions to come to the attention of the court. If they do become known to the court they should, of course, not be considered in arriving at a finding or sentence.

173. Exceptions to the hearsay rule.—The principal exceptions likely to be met in the administration of naval law follow:

174. Confessions.—A confession is an acknowledgment of guilt. If admissible, corroborated, and believed, nothing further is necessary for a finding of guilt. A confession, strictly speaking, is hearsay. However, it may be repeated in evidence by a person hearing it if it was given voluntarily.

It must be affirmatively shown that the confession was entirely voluntary on the part of the accused. A confession is, in a legal

sense, "voluntary" when it is not induced or materially influenced by hope of release or other benefit or fear of punishment or injury inspired by one in authority, or, more specifically, where it is not induced or influenced by words or acts, such as promises, assurances, threats, harsh treatment, or the like, on the part of an official or other person competent to effectuate what is promised, threatened, etc., or at least believed to be thus competent by the party confessing. And the reason of the rule is that where the confession is not thus voluntary there is always ground to believe that it may not be true. Statements, by way of confession, made by an inferior under charges to a commanding officer, judge advocate, or other superior whom the accused could reasonably believe capable of making good his words upon even a slight assurance of relief or benefit by such superior should not in general be admitted. Thus in a case where a confession was made to his captain by a soldier upon being told by the former that "matters would be easier for him", or "as easy as possible", if he confessed, such confession was held not to have been voluntary and therefore improperly admitted. And it has been similarly ruled in cases of confessions made by soldiers upon assurances being held out or intimidation resorted to by noncommissioned officers. Confessions made by bluejackets to officers or petty officers, though not shown to have been made under the influence of promises or threats, etc., should, yet, in view of the military relations of the parties, be received with caution. Of course, the above principles apply to a written confession as well as to an oral one. In some cases before courts-martial it appears that the accused has signed a paper confessing his guilt, stating in the paper that he confesses freely without hope of reward or fear of punishment, etc. Such statements are not conclusive that the confession was voluntary. Evidence may be introduced. If the evidence shows that the statement was not in fact voluntary, the latter should not be considered by the court.

175. A confession must be offered in its entirety.—A confession must be offered in its entirety, so that the accused receives the benefit of having all of his statements construed together to reach their full and actual meaning. But this rule only applies to all the statements made at a single interview or in a single document; statements made by the accused at a separate time or in another document need not be used.

176. Confessions and the *corpus delicti*.—An accused may not be convicted on his extrajudicial confession alone. It must be corroborated by independent evidence. This evidence, however, need not be such as alone to establish the *corpus delicti* beyond a reasonable doubt; it is sufficient if, when considered in connection with the confession, it

satisfies the court beyond a reasonable doubt that the offense was committed and that the accused committed it.

That the evidence of the *corpus delicti* should be introduced before a confession is good practice, but the court in its discretion may determine the order of evidence. Thus, within the discretion of the court, a confession may be received, subject to being stricken out upon failure subsequently to prove the *corpus delicti*.

177. Court decides admissibility.—The burden is upon the side wishing to introduce a confession to show that it was voluntarily made. Evidence should be introduced to establish the conditions under which a confession was made, and, where facts shown by preliminary examination are conflicting, the question of whether the confession was voluntary is for the court to decide.

178. Examples of voluntary and involuntary confessions.—A confession is voluntary and admissible though elicited by questions put to a prisoner by a constable, magistrate, or other person, even though the question assumes the prisoner's guilt.

The commandant of a naval district obtained a confession from an accused person by promising that, if the accused would confess his guilt, he would urge the Department to mitigate such sentence as might be adjudged by the general court martial which was to be convened in the accused's case. It was held that this confession was inadmissible since it was not voluntary in the legal sense of the word.

179. Any information obtained through a confession is admissible.—Although the confession may not be admissible, if any information given in it leads to the discovery of facts which can be proved by other evidence, these facts may be shown. Thus, in a prosecution for murder, evidence of the discovery in a certain place of the remains, money, or clothing of the deceased, or of the weapon by which he was killed, with so much of an involuntary confession as relates directly to such facts, is admissible.

180. Confessions obtained through artifice are admissible.—The employment of any artifice or fraud not calculated to produce an untrue statement in obtaining a confession does not render it inadmissible.

181. Warning or caution not essential.—The fact that a voluntary confession was made without the accused having been warned or cautioned that it might be used against him does not affect its admissibility. The better course, however, where the confession is made to a superior officer, is to require proof that he understood the confession was entirely voluntary and was not influenced by promises or threats.

182. Admissions.—In many instances an accused has made statements which fall short of being acknowledgments of guilt, but which nevertheless, constitute important admissions as to his connection or possible connection with the offense charged.

Likewise, any voluntary statement by one accused of or suspected of crime, relating to some particular fact or circumstance and not the whole charge, which indicates a consciousness of guilt and tends to connect him with the crime charged and to incriminate him is admissible as an admission against interest (1). An "admission" is something less than a "confession", as it acknowledges only some particular fact or circumstance, pertinent to the issues and tending to prove guilt in connection with other circumstances, while a "confession" covers the whole transaction, admitting guilt.

183. Admissions in open court.—An admission in open court, when such admission is voluntarily made by the accused or by his counsel in his presence and with his express or implied authority, is a judicial acknowledgment of the matter admitted and dispenses with the necessity of evidence to establish it.

184. Same: By conduct.—Admissions may consist of conduct, such as flight, concealment, destruction, or fabrication of evidence, bribery, or even of silence.

185. Same: By silence.—The silence of a party when he would naturally be expected to speak may be evidence against him. It must be shown that the accused heard or was in a position to have heard the statements against him, and the circumstances must have been such as naturally and reasonably to have called for a reply from him.

186. Admissions of an accused are available against others engaged with him in a joint criminal undertaking.—Admissions of one joint conspirator are available against the others. Only where such statements fall within the *res gestae* rule could they be admissible for the defense. The acts and statements of a conspirator, however, made after the common design is accomplished or abandoned, are not admissible against the others, except acts and statements in furtherance of an escape. It is immaterial whether such acts or statements were made in the presence or hearing of the other parties. They are binding upon all parties if they are in furtherance of the common design. Foundation must first be laid by either direct or circumstantial evidence sufficient to establish *prima facie* the fact of conspiracy between the parties, unless the judge advocate states that the conspiracy will later appear from evidence to be

(1) Underhill's Criminal Evidence, par. 262, citing *Baker v. U. S.*, 21 Fed. (2d) 903; *Fuller v. U. S.*, 53 Fed. (2d) 316; *Malaga v. U. S.*, 57 Fed. (2d) 822.

adduced. While in Federal courts and courts-martial corroboration of the testimony of a co-conspirator, or accomplice need not be required, yet from the character of the associations formed, the uncorroborated testimony of a co-conspirator or accomplice should be received with great caution.

187. Pedigree.—A man may testify to his own age, although his testimony must be clearly hearsay. Likewise, any fact of family history such as birth, parentage, relationship, marriage, age, etc., or the date or place thereof, is admissible, as a matter of general family repute.

188. Dying declarations.—Under indictments for murder and manslaughter, the law recognizes an exception to the rule rejecting hearsay, by allowing the dying declarations of the victim of the crime, in regard to the circumstances which have induced his present condition, and especially as to the person by whom the violence was committed, to be detailed in evidence by one who has heard them. It is necessary, however, to the competency of testimony of this character—and it must be proved as preliminary to the proof of declaration—that the person whose words are repeated by the witness should have been under a sense of impending death; though it is not necessary that he should himself *state* that he speaks under this impression, provided the fact is otherwise shown. It is no objection to testimony of this character that such declarations were brought out in answer to leading questions, or upon urgent solicitations addressed to him by any person or persons; and if, instead of speaking, he answered the questions by intelligible signs, these signs may equally be testified to. Dying declarations are admissible as well in favor of the accused as against him. Evidence of such declarations should be received only with great caution, owing to the circumstances surrounding their making and the absence of the ordinary legal safeguards.

189. *Res gestae*.—*Res gestae* consists of involuntary exclamations made contemporaneously with the main occurrence, and inspired by sudden excitement or fright. It has been defined to be declarations of the individual made at the moment of a particular occurrence, when the circumstances are such that we may assume that his mind is controlled by the event, and may be received in evidence, because they are supposed to be expressions involuntarily forced out of him by the particular event and thus have an element of truthfulness which they might otherwise not have. To make declarations on this ground admissible, they must have been not mere narratives of past occurrences, but must have been made at the time the act was done which they are supposed to characterize and have been well calcu-

lated to unfold the nature and quality of the acts they were intended to explain, and to so harmonize with them as to constitute a single transaction. Examples of it are threats or declaratibns of the accused in connection with his commission of the crime that indicate his intent or knowledge; declarations or exclamations of a party injured that go to indicate the nature of the violence and the parties responsible; language of accomplices; cries of bystanders; facts, circumstances, and declarations showing premeditation and preparation for the crime. All such may be established by the testimony of persons who heard the utterances, etc. All such declarations and statements must be made so near in time to the principal transaction as to preclude the idea of deliberate design or afterthought in making them, but it is not essential that they should have been made in the presence or hearing of the accused. Nor does it matter that the party making them would be incompetent to testify in the case. For instance, the statements of a wife under such circumstances would be admissible against her husband. Where the crime committed is the culmination of a series of acts, such as in riots, etc., the *res gestae* rule applies to all acts and declarations of the rioters and bystanders that would tend to indicate purpose, motive, etc.

The *res gestae* is considered as an act connected with or an incident of a main transaction, and not as testimony. As soon as it assumes the character of a narration, rather than a spontaneous exclamation, and there is probable ground for belief that it was inspired by a desire to influence the case, it is inadmissible as falling under the hearsay rule. The application of the rule of *res gestae* is not limited strictly to circumstances and occurrences contemporaneous with the principal facts at issue nor with the transactions leading up to the principal facts, but would extend to a case of identification, as when, for instance, a party who has seen the commission of a crime and afterwards sees the accused and spontaneously identifies him by some such exclamation as "There's the man that did the killing," although such statement as to identification may have been made days after the principal act was committed.

190. Same: Illustrations.—The following examples illustrate what constitute the *res gestae*:

Where a man is charged with murder, manslaughter, or assault, and the person against whom the violence is offered is another man, and the wife of the former, while walking with the latter, exclaims, "Run, here comes my jealous husband and he will kill you!" her exclamations would be admitted as part of the *res gestae*. If the man had then fled to his house pursued by her husband, and she had

followed to deter him from injuring the other man and later had run from the house shouting, "My husband is killing Jones!" or "has just killed Jones!" her exclamations would be admissible as constituting part of the *res gestae*. If a party in the next room had heard a shot and then a voice that he recognized as Jones' say, "You shot me for revenge and nothing else", the declaration would be considered as a part of the *res gestae*.

191. Statements of condition or intention of person injured.—The person injured by the crime, whether dead or alive, is in no sense a party to the prosecution, and his statements made out of court are not evidence either for or against the accused, unless admissible under one of the exceptions already given, or unless they are made to a physician or other person, where relevant, for the sole purpose of showing physical condition at the time. This rule does not justify admission of a narrative statement as to the cause of the injury or illness.

192. Definition of documentary evidence.—Legal evidence is not confined to the human voice or oral testimony, but includes every tangible object capable of making a truthful statement, such latter class of evidence being roughly classified as "documentary evidence." In oral evidence the witness is the man who speaks; in documentary evidence the witness is the thing that speaks. In either case the witness must be competent—that is, must be deemed competent to make a truthful statement—and in either case the competency of the witness must be proved before the evidence is admitted, the difference being that in oral evidence the competency is proved by a legal presumption, and in documentary evidence the competency must be proved by actual testimony; and the further difference that in oral evidence the credit of the witness is tested by his own cross-examination, while in documentary evidence the credit of the witness is tested by the cross-examination of those who must be called to prove its competency.

193. General rules applicable to documents.—In the use of documents written or printed, in evidence, there are certain fundamental rules to be satisfied, each of them resting on experience demonstrating it to be necessary or useful, where any real dispute exists. These rules are given in the following sections:

194. Rule 1. "Best evidence" rule.—This rule, briefly, forbids secondary evidence of the contents of a writing so long as the original is unaccounted for. Exception is made, however, where it is satisfactorily shown that the original has been lost or destroyed without fault of the party offering the evidence. When the door is thus opened to secondary evidence it may be of any kind available.

copy of the original would be the best, but verbal testimony as to the contents would be admitted from a person who had knowledge of the document. Where the original is in the possession of the party against whom the evidence is offered and the latter fails to produce it after reasonable notice, either a duly authenticated copy, or parol evidence by some one knowing the contents of the original, may be received.

195. Same: Exception to rule in the case of voluminous documents.—Where the original consists of numerous accounts or other documents that can not be examined by the court without great loss of time, and the fact sought to be established from them is only the general result of the whole, parol evidence may be received to establish the general result without reading the records; as, for example, where an officer's official record, embracing numerous individual reports, letters, etc., is introduced to prove that he has never been reported for certain misconduct. In such a case a witness who has carefully examined the reports may be permitted to testify as to the general result; that is, that the official record contains no remarks to the effect that the accused was intemperate, etc. Likewise, where it is desired to prove from a document, as a service record, that an enlisted man has received an average mark of 4 in sobriety, it is unnecessary to read all his marks under this heading, but the general result may be stated by the witness who has examined the record.

In such cases it must be shown that:

(a) The writings are so numerous or bulky that they can not conveniently be examined by the court.

(b) The fact to be proved is the general result of the whole collection.

(c) The result is capable of being ascertained by calculation or examination.

(d) The witness is a person skilled in such matters, and capable of making the calculation or examination.

(e) He has examined the whole collection and has made such a calculation or examination.

(f) The opposite party has had access to the books and papers from which the calculation or examination is made.

(g) Opportunity is afforded the opposite party to cross-examine the witness upon the books and papers in question, and to have them, or such of them as the cross-examiner may desire (or properly authenticated or proved copies), available in court for the purposes of the cross-examination.

196. Same: Exception to rule in case of official records and certificates.—The law (28 U. S. Code 661) provides that copies of records, etc., of the Government, duly authenticated under official seal, shall be admitted in evidence equally with the originals thereof.

It must be borne in mind that the mere fact that the document is an official report does not of itself make it admissible in evidence. This law merely makes copies of any records or papers in the Navy Department or any bureau thereof, or in the official files of a commander in chief, fleet, squadron, division, flotilla, or smaller unit commander, or in the official files of the commanding officer of a ship, brigade, regiment, or separate or detached battalion, or of a navy yard or naval station, if authenticated by the signature of the chief of bureau, commander or commanding officer or commandant, as the case may be, and the impressed stamp of the bureau, office, ship, etc., having custody of the originals, admissible into evidence equally with the originals thereof before any naval court or board, or in any administrative matter under the Navy Department.

The act of June 20, 1936 (28 U. S. Code 695e), provides that a copy of any foreign document of record or on file in a public office of a foreign country, certified by the lawful custodian, when authenticated by a certificate of a consular officer of the United States under seal, shall be admissible in evidence equally with the original in any court of the United States. This rule may be followed by a naval court martial.

197. Rule 2. "Parol evidence" rule.—This rule is that the contents of a written instrument can not be altered by oral declarations, and that evidence tending to show such alterations will not be received or heard. This rule, however, does not exclude testimony for the purpose of explaining any ambiguity in a document or of throwing light on the circumstances attending its making. Such testimony does not controvert the writing. But it can not be used to add terms to the writing.

The "parol evidence" rule is binding, of course, only on the parties to the documents.

In general, a document is *prima facie* only and is not conclusive evidence of the facts stated therein. The opposite party may introduce evidence to rebut it or show that the contrary is the truth.

198. Rule 3. The document must be properly introduced into evidence.—When documentary evidence is offered before courts-martial, it must be in public session of the court, and the proper procedure is as follows: The proper custodian (the judge advocate or other person properly having the document in his possession) takes the stand as a witness to identify such document; the party offering the docu-

ment presents it to the opposite party and to the court for inspection and opportunity to interpose objection to its admission; and then, if there be no reasonable objection interposed, the witness reads therefrom such entries as may be pertinent to the issue. Should objection be interposed by either party to the trial, the court will rule upon the objection, and the decision of the court thereon will be final, subject to consideration by the reviewing authorities.

199. Rule 4. Authentication.—Every document or other writing offered in evidence must be authenticated; that is to say, its genuineness must be proved; this may be proved like any other fact—by calling a witness who saw it executed, or to testify as to handwriting. It may also be done under the exception to the hearsay rule for official documents, as where a notary's certificate of an absent party's acknowledgment is used, or where an official copy by the custodian is used. In all such cases of the use of official documents proof of authenticity is facilitated by the presumption of genuineness which attaches to an official seal or signature, with recital of the official title of the person signing. No further evidence of authenticity is needed, where this presumption applies, unless the other side rebuts it. This does not apply, however, where the document appears on its face as of doubtful veracity. It is proper to call witnesses to show that a writing offered in evidence is not competent in that it can not be relied upon owing to the way it was prepared, or for any other reason that may render it incompetent. Also it may be shown that entries in a document have been made by unauthorized persons, or that the document is a forgery. The party producing a document which has been altered in a part material to the question in dispute, and which appears to have been altered after its execution, must satisfactorily account for the appearance of the alteration before the document will be received in evidence.

200. Rule 5. The document must be offered in full in evidence.—Although only a part of a document may have been read to the court, or only a general result deduced therefrom may have been testified to, the document in full must have been offered and received in evidence before such testimony can be received. The opposite party is thus afforded an opportunity to call upon the witness to read such additional entries as may be pertinent to the issue and for which the party introducing the document failed to call. Thus, if the question at the time before the court is the character of an accused, and the defense has introduced in evidence his service record from which it has been shown that the accused has an average of 4 in markings in sobriety, the judge advocate, by cross-examination, can require the witness to read the marks of the accused in obedience, in

order to show that the accused has a number of low marks therein or that his average therein is low. In other words, the rule provides an opportunity for the court to have before it all the information contained in the document, and the party introducing it in evidence can not pick and choose therefrom the points he desires to set forth and suppress the remainder. However, documentary evidence offered to a court need not necessarily be a record complete in itself. For example, when, under article 60, A. G. N., the record of the testimony of a witness, from whom oral testimony can not be obtained, given before a court of inquiry, is offered in evidence before a general court-martial, the full document admissible in evidence is the record of the entire testimony of such witness before the court of inquiry and not the whole record of proceeding of such court.

201. Rule 6. Hearsay rule.—Where the author of a document does not appear as a witness, it remains only a hearsay statement and can be received only under some exception to the hearsay rule. Thus, in general, *ex parte* affidavits, letters from members of the family of an accused, certificates from a physician that an accused has been under medical treatment, etc., the admission of which would, in effect, permit the author to testify without submitting him to cross-examination, are mere hearsay statements and are inadmissible in evidence. Entries in books of account of a deceased person and official records and certificates are the most common examples of statements admissible as an exception to the hearsay rule.

202. Same: Exception in the case of entries in the regular course of business.—Courts and boards in the Navy will be governed by the following rule of evidence laid down by the act of June 20, 1936 (28 U. S. Code, Supp. 695):

Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence, or event, shall be admissible as evidence of said act, transaction, occurrence, or event, if it shall appear that it was made in the regular course of any business, and that it was the regular course of such business to make such memorandum or record at the time of such act, transaction, occurrence, or event or within a reasonable time thereafter. All other circumstances of the making of such writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect its weight, but they shall not affect its admissibility. The term "business" shall include business, profession, occupation, and calling of every kind.

203. Same: The rule does not apply when document is not offered testimonially as to its contents.—The distinction must be recognized between cases in which a document is offered as evidence of the truth of the facts stated therein and those in which it is not so offered. As, for example, in a case where the specification alleged that certain

conduct brought scandal and disgrace upon the naval service, it was held that a newspaper was properly admissible in evidence, not as evidence of the facts stated therein in regard to the conduct of the accused which must be otherwise established, but as evidence of the publicity which was given the alleged misconduct, for which purpose it was not hearsay but was the best evidence.

204. Private documents.—It is a general rule that private documents of an *ex parte* nature, such as affidavits, are not admissible, if objected to, as evidence of the subject matter therein contained. They are mere self-serving statements. However, an affidavit is admissible as to collateral or ancillary matters, as, for instance, to establish the loss or destruction of a document in order to prepare the way for secondary evidence, and to impeach a witness. But the original authenticated entries and writings of a person who was in a position to know the facts therein stated, made at about the time such facts occurred, are admissible as evidence of such facts under the following circumstances, provided the entrant is unavailable as a witness, as in case of subsequent death or insanity: (1) When the entry or writing is against the interest of the maker; and (2) when it was made in due course of business, in a professional capacity, or in the course of the person's ordinary and regular duties.

205. Same: Letters and telegrams.—If competent and relevant a letter or telegram is admissible. Before a letter can be received against the accused it must be shown that he wrote, dictated, or signed it. A letter written by other persons is not admissible either for or against the accused until its authenticity is established, and if written to the accused it must appear that he replied thereto or acted on its contents. These same remarks apply to a telegram. When its genuineness is shown a telegram may be received in evidence although unsigned or not in the accused's handwriting. In court-martial cases the original telegram, and consequently the one that must be produced to satisfy the "best evidence" rule, is the one deposited at the sending office. The received copy can only be given in evidence on a showing that the original is lost, etc., as stated in section 194.

206. Registers, records, photographs, etc.—Attendance records at any place, such as roll calls or muster sheets, hotel registers, and the like, made in the regular course of business (see sec. 202), are admissible as evidence. A stub may be admitted if identified by the person who made it out and testified to have been correctly made and to have corresponded with the check or other writing which has been lost. A newspaper record of a ball game or other occurrence is not competent evidence. A photograph proved to be a true representation of the

thing it represents is competent. The essential foundation for a photograph of a person, for instance, may be laid by testimony that it looks like that person. An X-ray photograph verified by proof that it is a true representation is admissible. An official chart is admissible as an official document. An unofficial chart or sketch, diagram, plan, or drawing, representing things which can not be as conveniently and as clearly described by witnesses, when proved to be correct or when offered in connection with the testimony of a witness, is admissible as a legitimate aid to the court; a showing of approximate correctness is sufficient.

207. Memoranda in evidence.—A memorandum properly proved correct when made may be introduced into evidence.

209. When a document is not in the hands of the party desiring to introduce it.—If the document or paper to be introduced is not in the hands of the party desiring to introduce it, it may be produced in court by serving upon the holder a *subpoena* (or *summons*) *duces tecum*.

210. In connection with making up the record.—In general, either the document itself or a certified copy thereof, or a certified copy of such extracts therefrom as were read to the court by either party, must be appended to the record or set out in full in the recorded testimony of the witness who reads from the document. As, however, an officer's record is a part of the official files of the department, it is not required that the original or a certified copy thereof be attached to the record of proceedings where the court is one convened by the Secretary of the Navy. Also, when a document is an exhibit attached to the record of a court of inquiry or board, or to another court martial record, and is such that a copy could not well be made, as a chart, design, etc., or where documentary evidence is ruled out, neither the original nor a certified copy thereof need be appended to the record; but its contents should be referred to in the body of the record, at the appropriate place, so that the reviewing authority may know what the document was and where it may be found.

211. Deposition: Definition of.—A deposition is the testimony of a witness, put or taken down in writing, under oath or affirmation, before an officer empowered to administer oaths, in answer to interrogatories and cross-interrogatories submitted by the party desiring the deposition and the opposite party.

212. Same: When taken.—See the act of February 16, 1909, article 68, A. G. N.

213. Same: How taken.—The method of procedure in order to obtain a deposition is as follows: The party—prosecutor or defend-

ant—desiring the deposition submits to the court a list of interrogatories to be propounded to the absent witness; then the opposite party, after he has been allowed a reasonable time for this purpose, prepares and submits a list of cross-interrogatories. After the court has assented to the interrogatories and cross-interrogatories thus submitted, it adds such as, in its judgment, may be necessary to elucidate the whole subject of the testimony to be given by the witness. Depositions may also be taken before the assembling of the court by mutual agreement between the judge advocate and the accused (counsel), subject to objections when read in court.

If the witness whose deposition it is desired to take be a civilian, the judge advocate should prepare, in duplicate, a subpoena requiring the witness to appear before the officer designated at the time and place designated for the purpose of giving his deposition. The officer who is to take the deposition will be designated, or caused to be designated, by the convening authority, or by the commandant of the naval district in which the deposition is to be taken. It may be left to the designated officer to name the time and place of taking the deposition. The subpoena (in duplicate), together with the interrogatories, should be forwarded to the officer who is to take the deposition. This officer will cause the duplicate subpoena to be served personally upon the witness and return the original, with indorsement that the duplicate has been delivered, to the judge advocate. A civilian witness who attends to give his deposition is entitled to the same fees and expenses as if he had attended personally before the court, and a proper account with the required data should be furnished.

If the deposition of a person in the service is required, a summons will not be inclosed with the interrogatories, but the officer before whom the deposition is to be taken, or the officer who causes it to be taken, shall direct the witness to appear at the proper time and place.

If the witness is in a foreign country his testimony or written interrogatories may be taken by a consular officer of the United States, as provided by the act of June 20, 1936 (28 U. S. Code 695b).

214. Same: After execution.—When the deposition has been executed, it shall be forwarded sealed to the judge advocate, who then becomes the legal custodian thereof. As soon as practicable after its receipt the judge advocate shall open it in the presence of the accused (counsel) and submit it to the latter, so that he may be prepared at the proper time in the course of the trial to make any objection he may see fit. The judge advocate, as the legal custo-

dian of the deposition, is responsible that no alteration whatever is made therein.

215. Same: Introduction of.—To introduce the deposition, the judge advocate takes the stand as a witness to identify the document. The party offering the deposition presents it to the opposite party and to the court for inspection and opportunity to interpose objection to its admission; and then, if there be no valid objection interposed, the judge advocate shall read the interrogatories and answers. Should objection be interposed by either party to the trial, the court will rule upon the objection.

If it should prove that the testimony contained in a deposition is against the interest of the party causing it to be taken, he can not be compelled to introduce it in evidence against his wishes. Nor can the opposite party, against objection, make use of the deposition, but, where applicable, the following procedure shall be followed:

In cases where the party (either the prosecution or the defense) requesting the taking of a deposition has been taken by surprise, or if for any other reason the answers of the deponent are of such nature that the deposition is withdrawn, the court should allow the opposite side, should it so desire, time to procure another deposition from deponent and allow the deposition to be introduced into evidence out of the regular order if necessary.

In addition to objection to the admission of the deposition as a whole, as set forth above, it is, even after admission, subject to objection, in part, in the same manner as objection might be made to the testimony of a witness actually on the stand.

216. Same: Appended to record.—Whether objections have or have not been sustained, the entire deposition will be properly marked, appended to the record, and referred to in the proceedings.

217. Affidavit.—An affidavit differs from a deposition in that it is taken *ex parte* and offers the opposite party no opportunity to cross-examine the maker thereof. An affidavit, therefore, is not admissible in evidence for the purpose of proving the subject matter with which the affidavit deals.

218. Former testimony: Before a civil court or court martial.—Testimony given in a former trial either by court martial or in a civil court of the same accused on substantially the same issues may be admitted in evidence on showing that the record thereof is complete, that the witness was duly sworn and testified, that the accused had full opportunity for cross-examination, and that the witness has since died, or is physically or mentally incapable of being present at the trial (e. g., very sick or insane), or that he is kept out of the way by the adverse party (i. e., where enough has been

proved to cast upon the adverse party the burden of showing and he, having full opportunity therefor, fails to show that he has not been instrumental in concealing the witness or in keeping him away); but such former testimony is not admissible merely because the witness is beyond the jurisdiction of the court or his whereabouts unknown. If no objection is made to the admission of testimony given at a former trial the foregoing conditions need not be observed.

Former testimony before a court martial or civil court may also be admitted in evidence under circumstances corresponding to those enumerated in section 219, subparagraphs (a), (b), (c), (d), (e), and (f).

219. Same: Before a court of inquiry in cases not provided for by Article 60 of the Articles for the Government of the Navy.—Where oral testimony can not be obtained, the use of court of inquiry proceedings as evidence before a court martial is expressly authorized by article 60, A. G. N., subject to certain limitations as explained in section 220. However, former testimony before a court of inquiry may be received in evidence by a court martial in certain cases which are not provided for by article 60, A. G. N., and when so received the limitations contained in that article do not apply and any authorized sentence may legally be adjudged.

Instances in which the proceedings of courts of inquiry may thus be used in evidence are as follows:

(a) Where it is expressly agreed by the accused that the proceedings of the court of inquiry may be admitted as evidence on his trial, each party to have the privilege of introducing other evidence—for the right of the accused to be confronted with the witnesses against him at his trial is one that he may waive.

(b) Where the proceedings of the court of inquiry are offered in evidence by the accused in his own behalf and received by the court.

(c) Where the accused has previously testified voluntarily before a court of inquiry, such testimony is admissible when offered by the prosecution at his trial, and it is not essential to the admissibility of his testimony that he should have been warned by the court of inquiry that what he said might be used against him. If it appear that the accused while a witness before a court of inquiry was required to give evidence tending to criminate himself, after properly claiming his privilege against self-crimination, the testimony thus adduced can not be given in evidence against him at his trial. The witness is thus protected from the consequences which might otherwise follow from the action of a court of inquiry in requiring him to answer incriminating questions—a right which the court of

inquiry possesses to the same extent as courts-martial. But if the accused testified voluntarily before the court of inquiry, answers given by him within the scope of legitimate cross-examination, although under compulsion, are admissible in evidence against him at his trial. If the accused were improperly required to testify as a witness before a court of inquiry, in disregard of the act of March 16, 1878 (A. G. N. art. 42 (a)), the testimony so given can not be used against him at his trial. (See sec. 234.)

(d) Where a witness before the court martial has made prior inconsistent statements before a court of inquiry, the proceedings of the court of inquiry may be introduced in evidence for the purpose of impeaching the testimony of such witness, subject to the general rules of evidence requiring that a proper foundation be laid before evidence may be introduced to impeach the testimony of a witness by showing prior inconsistent statements.

(e) Where the accused is charged with perjury or false swearing and it is necessary, in order to sustain such charge, to prove what was said by the accused as a witness before a previous court of inquiry, the proceedings of such court may be introduced in evidence against him for this purpose.

(f) The proceedings of the court of inquiry may be used for the purpose of refreshing the memory of a witness before a court martial in accordance with general rules of evidence. Any witness testifying before a court martial may, in the discretion of the court, be permitted to refresh his memory from the record of the testimony given by him before a court of inquiry. If the witness, after examining the record, testifies from his own independent recollection of the facts, the record itself can not be introduced in evidence or read to the court, but if the witness has no independent recollection, but testifies merely from his knowledge or belief in the accuracy of the record, it becomes a part of his testimony, just as if without it the witness had orally repeated the words from memory, and may therefore be read aloud by him and shown to the court, or otherwise put in evidence.

220. Same: Before a court of inquiry as provided by article 60 of the Articles for the Government of the Navy.—If the requirements of the preceding section be not fulfilled, testimony given before a court of inquiry may still be received by a court martial if it satisfies the requirements of article 60 of the articles for the government of the Navy. This article provides, in effect, that the proceedings of courts of inquiry shall be admissible in evidence before courts-martial under the following conditions:

1. That such proceedings must be “duly authenticated by the signature of the president of the court and of the judge advocate”;

2. That the case in which the proceedings are received in evidence must be one “not capital”;

3. That the case in which the proceedings are received in evidence must be one not “extending to the dismissal of a commissioned or warrant officer”;

4. That “oral testimony can not be obtained.”

The second and third conditions above stated have been construed to mean that the proceedings of courts of inquiry shall not be admissible in evidence before a court martial, under authority of article 60, A. G. N., where the sentence of death or dismissal is by law made *mandatory* upon conviction of the offense charged. The sentence of death is not, under the articles for the government of the Navy, mandatory upon conviction in any case triable by a naval court martial.

Where a court martial is authorized but not required to adjudge the punishment of death or dismissal upon the conviction of an offense, the proceedings of a court of inquiry may, under the terms of article 60, A. G. N., be introduced in evidence against the accused, subject to the remaining conditions prescribed in said article, but in any case in which the proceedings of a court of inquiry are so used in evidence under article 60, A. G. N., the court must be careful not to adjudge a sentence extending to death or dismissal.

The fourth condition above stated is that “oral testimony can not be obtained.” Oral testimony may be regarded as unobtainable under the following circumstances:

(a) In the cases of civilian witnesses who are beyond the reach of compulsory process which the judge advocate is authorized to issue. In such cases it should appear that subpoenas intended to secure the voluntary attendance of such witnesses have been forwarded to the Secretary of the Navy, and that such action has failed to produce their appearance at the trial.

(b) In the cases of persons in the naval or military service whom the judge advocate is not authorized to summon. In such cases it should appear that summons for such witnesses have been forwarded to the Secretary of the Navy or other convening authority, and that such action has failed to produce their appearance at the trial.

(c) In the case where a witness has died, has become insane, or by the opposite party is kept out of the way, or is too ill or infirm to come to the court, or if his whereabouts be unknown.

When a fact has been sufficiently established, it is unnecessary to consume the time of the court by introduction of additional evidence

which is merely cumulative. The court is the judge of how much evidence shall be received with reference to any particular fact, and where in any case it considers that sufficient evidence has already been introduced, it will properly hold that the case is not one in which "oral testimony can not be obtained" as to that fact, and will accordingly refuse to admit the proceedings of a court of inquiry with reference thereto, notwithstanding that such proceedings may contain the testimony of a witness as to such fact whose personal attendance before the court can not be obtained.

221. Same: Before a board of investigation when given under oath.—Article 60, A. G. N., has no application to the proceedings of boards of investigation. Accordingly, testimony of witnesses before boards of investigation given under oath may be received in evidence by a court of inquiry or a court martial only when such procedure is permissible by the general rules of evidence. It may be received in all cases noted in section 219, subparagraphs (a), (b), (c), (d), (e), and (f).

222. Same: Before a board when not given under oath.—The declarations before a board of investigation not under oath may not be received in evidence by a court of inquiry or a court martial, except under the conditions noted in section 219, subparagraphs (c), (d), (e), or (f).

223. Same: Introduction of.—It must be borne in mind that each separate witness' testimony is an entirely separate and distinct document, and although physically bound in with other separate documents, each such document must be separately introduced. It would be improper for a court before which such a document is introduced to examine any other parts of the proceedings of the court martial, court of inquiry, or board, as the case may be, except only in so far as may be necessary to make certain that the record is genuine, has been properly authenticated, etc.

Where it is decided by the court to receive the proceedings of a court of inquiry in evidence against the accused the procedure to be followed should be substantially the same as that outlined in section 215 with reference to depositions. That is to say, a proper foundation having been laid for the introduction of the proceedings, by establishing to the satisfaction of the court that conditions exist which make such proceedings admissible under article 60, A. G. N., or independently of that article, the judge advocate should take the stand as a witness, identifying the record and stating that he desires to read therefrom so much of the proceedings as embodies the testimony of a particular witness with reference to a particular point in issue; he should then present the record to the opposite party and to the

court for inspection and opportunity to interpose objection to its admission; if there be no valid objection offered, the judge advocate should proceed to read the questions and answers from the record of the witness' testimony before the court of inquiry, subject to objection in the same manner as objection might be made to a witness actually on the stand.

Since the scope of an investigation by a court of inquiry is commonly very broad, involving the conduct of various persons as well as condition of materiel, etc., it will frequently happen that the examination of a witness before a court of inquiry will include many matters that would not be relevant upon the trial of a particular accused before a court-martial, and the procedure above outlined for introducing the proceedings of a court of inquiry will serve to eliminate irrelevant evidence at the trial.

The testimony as read by the judge advocate should be recorded in the body of the court martial record, together with objections and rulings of the court thereupon, in the same manner as though such testimony were given before the court martial in person by the witness who appeared before the court of inquiry.

The accused should be allowed on cross-examination of the judge advocate to require that he read any other testimony given by the same witness before the court of inquiry which might serve to explain or to affect the weight of his testimony as read on direct examination, and to proceed further in the case in the direction of contradicting the witness, impeaching his reputation for truth and veracity, etc., in the same manner as though the witness had given his testimony in person at the trial.

In the event that the proceedings of the court of inquiry are offered in evidence by the accused, the procedure should be the same as indicated above except that the judge advocate, as custodian of the record, would be called as a witness for the defense for the purpose of getting such proceedings before the court.

The fact that the testimony of a witness before a court of inquiry may be legally admissible in evidence before a court-martial does not render any other parts of the record of the court of inquiry admissible, and no part thereof other than that testimony and exhibits used in connection therewith will ever be admitted into evidence except when agreed to by both parties. This applies with special force to the findings, opinion, and recommendation, which would be the worst kind of incompetent and prejudicial evidence.

224. Opinion evidence.—It is a general rule of law that inferences are for the jury or the court and that witnesses must confine themselves to facts and to matters within their own knowledge.

225. **Distinction between fact and opinion.**—The general distinction between fact and opinion is that a fact is something cognizable by the senses, whereas opinion involves a mental operation. What a witness thinks in respect to matters in issue is matter of opinion and he can not state it.

226. **Exceptions to the rule that witnesses can not state opinions.**—There are three principal exceptions to the general rule excluding opinion evidence, as given in the following three sections:

227. **Opinions arising from facts of daily observation and experience forming the basis of conclusions of fact.**—Opinions which are practically instantaneous conclusions drawn from numerous facts within the daily observation and experience of a witness are admissible. In this class are opinions, based upon the demeanor or appearance of a person, as to his sanity, sobriety, identity, or resemblance to another, his physical condition; or his temperamental condition, whether cool or excited, and the like. Any intelligent witness may testify as to his opinions of this character, which are merely conclusions of fact drawn from matters of everyday occurrence.

228. **Opinions as to handwriting.**—When there is a question as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the supposed writer, to the effect that it was or was not written or signed by him, is admissible in evidence. A person is deemed to be acquainted with the handwriting of another person when he has, at any time, seen that person write, or when he has received documents purporting to have been written by that person in answer to documents written by himself, or under his authority and addressed to that person, or when in the ordinary course of business documents purporting to have been written by such person have been actually submitted to him.

In any proceeding before a court or judicial officer of the United States where the genuineness of the handwriting of any person may be involved, any admitted or proved handwriting of such person shall be competent evidence as a basis for comparison by witnesses, or by the jury, court, or officer conducting such proceeding, to prove or disprove such genuineness.

229. **Opinions of experts.**—In cases involving questions requiring for their solution a knowledge of some specialty, the opinions of qualified experts in such specialty may be given in evidence. Such opinions are admissible for the reason that they are based upon experience and knowledge which is beyond that of the average member of a court. But the rule permitting the admission of "expert" testimony is subject to certain limitations. Before a witness can testify

as an expert he must qualify as such. The burden of so qualifying a witness rests upon the party introducing him as an expert. But the mere fact that a person who witnessed a certain act, which is a violation of the law, happens to be a professional man, does not constitute him an expert when he testifies as to his observation of that act. In addition to qualifying an expert, the necessity for his appearance must be established before his opinion should be received. A court may not permit an expert witness to be present during the trial and ascertain the facts directly from the evidence.

230. Same: Hypothetical questions.—The opinion of an expert witness may be obtained by means of a hypothetical question, and in putting such a question, facts may be assumed which there is evidence on either side tending to establish, but the facts must be stated without comment. While a hypothetical question must not assume facts outside of the evidence, it need not necessarily take into account all the testimony. Each party usually considers only his own evidence in framing his hypothetical questions, and this is entirely proper. The other party may, on cross-examination, put a hypothetical question to the same witness based on the evidence of his witnesses contradicting the other. While an expert witness may be allowed to *assume* facts, as above, to be true in order to base an opinion thereon, it remains for the court, in the last analysis, to determine whether such facts are true. The law, therefore, allows an expert to state an opinion upon an assumed state of facts, but does not permit him to express an opinion upon the specific question whether or not, upon the evidence, the accused is guilty, for this is the very question that the court is sworn to determine upon its *own* opinion.

231. Real evidence: Defined.—Real evidence is a term applied loosely to indicate objects of all sorts material to the issue, or almost any kind of evidence, except the testimony of witnesses or writings. Common instances are the weapons with which crimes are committed, articles stolen, and, in general, all objects which are relevant to the case. When objects, such as buildings, can not themselves be exhibited, photographs are admissible. If necessary or advisable, in order better to understand testimony given, the court may adjourn to the scene of the crime. In such a case the accused and his counsel must be present, and the court should take no testimony on the scene, and should allow no statements in the nature of testimony to be made further than is necessary to point out places already referred to in testimony given.

232. Same: Requisites of.—In general, the same rules apply to real evidence as to verbal testimony. Primarily it must be relevant. It

must throw some light on the issues. Thus it is proper in a case of assault and wounding to allow the witness to show the wound or scar resulting.

233. Evidence incompetent on account of character or circumstances of parties.—Evidence which might be admissible under any of the foregoing rules may still be excluded on account of the character or circumstances of the party offering to give it. This is considered in the following sections:

234. Accused as a witness.—Under the common law a person was not allowed to testify in his own interest. This was on the theory that such testimony would be so biased that it could not be believed. Such matters are now considered in weighing the testimony. The law now provides that the accused shall, at his own request, but not otherwise, be a competent witness, and shall be allowed to testify in his own behalf, and his failure to make such request shall not create a presumption against him. Care must be taken by the court that the accused is not placed on the stand unless he himself requests that he be permitted to testify, otherwise a fatal error is committed. The record must affirmatively show that the statutory request was in fact made. Any comment at any time, especially hostile comment, on the failure of the accused to request that he be allowed to testify in his own behalf is improper.

235. Compelling accused to criminate himself.—The Constitution provides that no person shall be compelled to give any evidence against himself. The prohibition of the fifth amendment against compelling a man to give evidence against himself is a prohibition of the use of physical or moral compulsion to extort communications from him and not an exclusion of his body as evidence when it is material.

The following are illustrations of what might be required without violating the principle embodied in the fifth amendment:

The admission of testimony as to marks and scars found upon the person of a defendant, in a criminal prosecution, during a forcible examination of him with a view to ascertaining his identity for the purpose of arresting him, is not prohibited.

Upon a trial a question was raised as to the identity of the defendant. One witness testified that he knew the defendant, and knew that he had tattoo marks (a female head and bust) on his right forearm. The court thereupon compelled the defendant, over his objection, to exhibit his arm, in such a manner as to show the marks to the jury.

It follows that it would be appropriate for the court to order the accused to remove his clothing for the purpose of examination by the

court or by a surgeon, who would later testify as to the results of his examination; and upon refusal to obey the order, the accused might have his clothing removed by force. The accused might likewise be compelled to try on clothing or shoes or place his bare foot in tracks, etc. But, where force would be necessary to compel compliance, it would comport more with the dignity of the court to have a surgeon make the examination out of the presence of the court and testify as to the result of the examination, or to advise the accused as to the purpose of the examination and to warn him that his refusal to obey would be considered as an admission on his part of what was sought to be ascertained by the examination. This conclusion would be quite within legal bounds as to presumption of facts.

But neither the accused nor any other witness can be compelled to manufacture evidence against himself, as by writing the name in an alleged forged instrument. Such evidence, obtained under compulsion, is incompetent and should not be received though no objection is made.

236. Testimony of an accomplice.—An accomplice is always competent to testify, whether he be charged jointly or separately. He is privileged to refuse to answer and can not be required to answer questions whose answers might tend to incriminate him, but this privilege is personal and may be claimed by the accomplice only when as a witness he is asked a question the answer to which might tend to incriminate him.

The privilege ceases, however, when his own trial is completed. The convening authority may promise not to prefer charges against one man on consideration of his testifying, but this should only be done when absolutely necessary to prevent the defeat of justice and when the accomplice is a participant in the crime to a minor degree.

The weight to be given testimony of accomplices is for the court. There is no absolute rule of law preventing conviction on the testimony of accomplices if juries believe them. Such uncorroborated testimony should, however, be viewed with suspicion and examined critically.

237. Member or judge advocate as a witness.—A member or judge advocate of the court is a competent witness. If required to testify such witness should be the first called, except in the case of the judge advocate called as the official custodian of a document. Should the president of the court become a witness, the oath or affirmation shall be administered to him by the member next in rank, who shall preside during the progress of his examination. If the judge advocate becomes a witness, he shall record his own testimony, unless the employment of a reporter has been authorized. When a member, the judge

advocate, the accused, or his counsel has completed his testimony, an entry shall be made to the effect that the witness resumed his seat as a member, judge advocate, accused, or counsel. Should the court be composed of but five members, one of whom is called as a witness, this will not affect the validity of the proceedings, since, in so testifying, the witness does not cease to be a member.

When a member has so testified as a witness, he shall be considered as challenged under the conditions of section 389.

238. Testimony of husband and wife.—The rule for naval courts martial is summarized:

(1) Wife or husband of an accused may testify *on behalf* of the accused without restriction, but when so testifying shall be subject to cross-examination in the same manner as an accused testifying at his own request.

(2) Wife or husband of an accused may *not* be called to testify *against* the accused without the consent of both accused and witness, unless on a charge of an offense committed by the accused against the witness.

(3) Wife or husband of any person may not testify to *confidential communications* of the other, unless the other give consent.

(The last two rules are rules of privilege, and are more fully considered in secs. 261 and 265.)

239. Testimony of counsel.—Testimony of counsel as to matters communicated to him by the accused will not be heard. It does not matter that the counsel does not act as such at the trial; it is enough that he has been consulted as a tentative counsel. If the accused personally agree that such testimony be competent it becomes so. If, however, such communications clearly contemplate the commission of a future crime, as, for example, perjury or subornation of perjury, the testimony will be competent.

240. Testimony of medical officers and civilian physicians.—It is the duty of medical officers to attend officers and men when sick, to make the annual physical examination of officers, and examine applicants for enlistment, and they may be specially directed to observe an officer or man or specially to examine or attend him; such observations, examinations, or attendance would be official and the information acquired would be official. While the ethics of the medical profession forbid doctors divulging to unauthorized persons the information thus obtained and the statements thus made to them, such information and statements do not possess the character of privileged communications. If a medical officer, when called as a witness before a court-martial, refuses to testify to such matters, he is subject to punishment under the forty-second article for the government of

the Navy or to court-martial. Neither is there any privilege between a civilian physician and a patient.

241. Testimony of children.—The admissibility of testimony of children is not regulated by their age, but by their apparent sense and understanding. The court may, in its discretion, receive the testimony of any child, regardless of age, and give it such weight as it may appear to deserve; provided, only that in the opinion of the court the child understands the moral importance of telling the truth, for which purpose the court may examine the child.

242. Testimony of witnesses mentally deficient.—Mental incapacity is a disqualification, but only to a limited extent, as follows: Insanity or intoxication may disqualify, but only to the extent to which they affect the subject of the testimony. For example, a religious hallucination as to angels saving a man from bullets does not disqualify the person from testifying as to the time of lighting a fire or the persons on duty at a certain post. Intoxication would disqualify only if it were so complete as to render the person senseless at the time of the event to be testified to.

The sanity of a witness having been questioned, the court must judicially determine this fact before permitting the witness to testify. When a witness is objected to on the ground of insanity, there are two usual methods of proving whether or not he is competent to testify, the first being from the testimony of medical authorities who have made a special study of mental diseases, and the second being from the opinions of persons of ordinary intelligence who have been acquainted with and who have had opportunity of observing the party under examination.

243. Witnesses before naval courts generally competent.—Matters that were once regarded as affecting the competency of witnesses are now treated as bearing only upon their credibility. As a general rule, the exceptions to which appear in the preceding sections, all witnesses capable of so doing are entitled to testify, and it rests with the court in its capacity as jury to decide how much weight is to be given to their testimony.

A presumption always exists in favor of the competency of a witness whose testimony is offered, and the burden of proving the contrary rests on the party objecting. In deciding upon the competency of a witness the court acts in the capacity of a judge, while in determining questions of credibility it acts in the capacity of a jury.

244. Persons amenable to service as witnesses.—All persons are amenable to the service of process to appear as witnesses. One who has disobeyed a subpoena or a summons can show as a defense to a proceeding to punish for contempt that it was impossible for him to

appear, or that by reason of illness or otherwise his life would have been endangered; but no duty, except of the most imperative kind, nor any business engagement, is a valid excuse for failure to attend.

245. Summoning witnesses.—The judge advocate shall summon as witnesses persons whose testimony is necessary to a trial, whether for the prosecution or the defense; but shall not, *except as hereinafter provided*, summon any witness at the expense of the United States.

The written instrument that serves to summon a witness who is in the naval or military service is termed a *summons*; a witness who is not in the service, a *subpoena*.

246. Same: Witness who is in naval or military service.—When it is desired to summon a witness who is in the naval or military service, the summons shall, whenever possible, be forwarded through official channels. When such a witness is present at the place where the court convenes he is simply notified, orally or otherwise, through the regular channels, of the time and place he is to appear.

When such a witness is not present where the court-martial is convened and his attendance would involve travel at Government expense, the judge advocate shall forward the summons seasonably to the convening authority, with the following information:

(1) A synopsis of the testimony which it is expected the witness will give.

(2) Whether the testimony it is expected the witness will give is, in the opinion of the judge advocate, material and necessary to the ends of justice.

(3) Whether the witness is summoned for the prosecution or for the defense.

The above statement should be accompanied by a request that the summons be transmitted to the person named therein for compliance. The right to have the necessity for the presence of such a witness passed upon by the convening authority applies equally to defense and prosecution witnesses.

In urgent cases, only, a request for the attendance of such witness may be made by telegraph.

The convening authority will, in proper cases, issue written orders to any officer under his command requested as a witness by the court, provided he has been authorized to issue orders to officers involving travel at Government expense. If the convening authority has not been so authorized, or the witness requested is not under his command, he will forward the request of the court to such common superior as may be authorized to issue the necessary orders.

If the witness requested be an enlisted man under the command of the convening authority, the latter will, if the circumstances warrant, approve the summons and forward it through official channels, to such enlisted man. The actual expenses only of enlisted men summoned as witnesses shall be paid and shall be provided by the pay officer upon order of the commanding officer of the ship or station to which they belong.

A naval or military witness, summoned as above, shall report to the president of the court upon his arrival in obedience to the summons, and it shall be the duty of the president to arrange for Government quarters and subsistence, if available, for such witness, if an enlisted man, during his attendance at the trial.

247. Same: Civilian witness.—The power with which a naval general court martial and a court of inquiry is vested to compel witnesses to appear and testify is conferred upon such courts by the 42nd A. G. N. A naval court martial has the power to subpoena witnesses, and such subpoenas run throughout the United States. However, article 42 (c), A. G. N., provides for the punishment of any person who wilfully neglects to obey the subpoena, but limits this power so that it shall not apply to persons residing beyond the State, Territory, or District in which such naval court is held. The word "District" applies to the District of Columbia only.

From the foregoing it will be seen that a subpoena issued by a naval court to compel the attendance of witnesses will run throughout the United States, but that the penalties provided in article 42 (c), do not attach where the person resides beyond the State.

To illustrate, a general court martial at the navy yard, New York, N. Y., has the power to compel the attendance of civilian witnesses who reside within the State of New York; and should such witnesses wilfully neglect or refuse to appear they may be proceeded against and prosecuted in the manner provided in article 42 (c) above-mentioned. However, should the naval court desire the attendance of a witness who resides in the State of New Jersey it can not compel his attendance, but should such witness be willing to appear to testify, he may lawfully be paid his fees and mileage. (But see the next section.)

248. Authority of the judge advocate in summoning civilian witnesses.—The judge advocate is authorized to subpoena as a witness any civilian who is to be a material witness as to *facts*, and who is within the State, Territory, or District in which a naval court sits and can compel attendance.

The judge advocate is not authorized to subpoena as a witness, at the expense of the United States, any civilian who is not within the

territorial limits in which the court can compel attendance, even though such witness be considered a material one and be willing to attend. In such cases the judge advocate shall forward the subpoena to the Secretary of the Navy, together with the information, and in the manner required when forwarding a summons for a naval witness who is not present at the station where the court martial is convened.

249. Same: Witnesses as to character or as experts not to be summoned or subpoenaed at Government expense.—The general rule is that a witness will neither be summoned nor subpoenaed at Government expense when it does not appear that such witness has personal knowledge of the facts at issue before the court, but rather that his testimony is desired merely as to character or as an expert.

When expressly authorized by the Secretary of the Navy, however, such a witness may be summoned or subpoenaed, and, in the case of a civilian expert witness, if special compensation is authorized by the Secretary of the Navy, this compensation will be paid, as provided in section 257, either in lieu of or in addition to the fees therein authorized, as directed by the Secretary.

The best evidence as to the character of an accused is his official record, which is forwarded to the judge advocate for use in connection with the case.

Under no circumstances will the department approve the summoning from other stations, at Government expense, of officers to give expert testimony, either for the prosecution or the defense, when there are other officers on duty at the place of the trial whose service should render them fully competent to give such testimony.

250. Same: Witnesses for defense.—The accused is, in general, entitled to have all the material witnesses for his defense summoned, except when their testimony would be merely cumulative and evidently add nothing to the strength of his case. As far as possible he should be allowed a full and free defense, as the least denial to him of any proper facility, opportunity, or latitude for it may serve to defeat the ends of justice.

251. List of witnesses.—The judge advocate shall, prior to the trial, if practicable, call upon the accused for a list of the witnesses he wishes summoned for the defense, and shall at the time furnish him with a list of the witnesses who are to appear against him. It is to be understood, however, that neither party is precluded thereby from calling further witnesses whose attendance may, during the course of the trial, be found necessary to the proper administration of justice.

252. The court may direct the summoning of witnesses.—While the court can not legally originate evidence—that is, take the initiative

in providing any part of the proofs—yet where, with a view to a more thorough investigation of the case, it desires to hear certain evidence not introduced by either party, it may properly call upon the judge advocate to procure it, if practicable, adjourning for a reasonable period to allow time for the purpose. New testimony thus elicited must, of course, be received subject to cross-examination and rebuttal by the party to whom it is adverse.

253. Service of subpoenas.—Unless he has reason to believe that a formal service of subpoena will be required, the judge advocate will endeavor to secure the attendance of a civilian witness by correspondence with him, sending him duplicate subpoenas properly filled out, with a request to accept service on one by signing the printed statement, "I hereby accept service of the above subpoena", and to return it to the judge advocate, for which purpose a return addressed penalty envelope should be inclosed. Ordinarily there will be no difficulty in securing the voluntary attendance of a civilian witness if he is informed that his fees and mileage will not be reduced by reason of his voluntary attendance, and that a voucher for his fees and mileage going to and returning from the place of the sitting of the court martial will be delivered to him promptly on being discharged from attendance on the court. If this procedure will not procure the witness, the judge advocate shall prepare duplicate subpoenas. Service is made by a personal delivery of the duplicate subpoenas to the witness, and proof of service by returning the original to the judge advocate properly indorsed and sworn to by the person who serves the subpoena. Any person duly instructed to do so may serve the subpoena, but the service must be personal.

If the desired witness lives near the place where the court is convened, and within the territorial limits in which the court can compel attendance, the subpoena may be served by the judge advocate, provost marshal, or by any other person instructed to do so. If the residence of the witness is not near at hand, but within the territorial limits in which the court can compel attendance, the president of the court shall address a letter to the commandant or senior officer present, requesting that a person be designated to proceed to such place as the desired witness may be for the purpose of serving the subpoena, and further requesting that the necessary transportation and subsistence be furnished. If the witness is beyond the territorial limits within which the court can compel attendance, the necessity for personal service no longer exists. In such case delivery may be made by such method as may be most practicable.

254. Advance notice to witnesses.—The judge advocate will endeavor to issue subpoenas to civilian witnesses and to make request for the

attendance of military witnesses at such time as will give each witness at least 24 hours' notice before starting to attend the meeting of the court.

255. When subpoena is disregarded.—In case a civilian, duly subpoenaed before a general court martial or court of inquiry, wilfully neglects or refuses to appear or qualify as a witness or to testify or produce documentary evidence as required by law, he shall at once be tendered or paid, in the manner prescribed in section 257, one day's fees and mileage for the journey to and from the court, and shall thereupon be again called upon to comply with the requirements of the law. For the further procedure to be taken in the event that a witness persists in refusal to attend, see articles 42 (*b*) and 42 (*c*), A. G. N. The fees and mileage of civilian witnesses residing beyond the territorial limits within which the court can compel attendance shall not be paid in advance, as such witnesses can not be punished if they disregard a subpoena.

256. Same: Warrant of attachment.—In order to compel the appearance of a civilian witness in certain exceptional cases, under the circumstances hereinafter set forth, it may become desirable to resort to a warrant of attachment.

In such cases the proper procedure is as follows: The president of the court will issue a warrant of attachment, directing and delivering it for execution to an officer designated for that purpose, generally the provost marshal of the court. He will also deliver to this officer the subpoena, indorsed with affidavit of service (to be returned when the warrant is executed), and a certified copy of the order appointing the court martial. A warrant, or writ of attachment, does not run beyond the State, Territory, or District (of Columbia) in which the court martial sits.

In executing such process it is lawful to use only such force as may be necessary to bring the witness before the court. Whenever force is actually required, the senior officer present, or other officer designated by the convening authority, nearest the witness' residence will furnish a detail sufficient to execute the process. The use of this procedure, however, should be resorted to only when the ends of justice absolutely demand it, when all other means have failed, and only *upon the authorization of the Secretary of the Navy*.

257. Fees of civilian witnesses.—When directed in writing by the commanding officer, payment of the fees and mileage of civilian witnesses shall be made by the disbursing officer of any vessel or, at a yard or station where there is no receiving ship, by the disbursing officer of the yard, or at Marine Corps posts, not at a navy yard or

station, and where there is no disbursing officer of the Navy, by the assistant paymaster of the Marine Corps serving with the command. The order from the commanding officer must be accompanied by a certified copy of the precept and by vouchers, properly sworn to by the witness and certified by the judge advocate or recorder of the court, or by the deck court officer, or by the officer before whom the witness gave his deposition.

The fees and mileage of a civilian witness who refuses to obey a subpoena to appear before a general court martial or court of inquiry will be duly paid (or tendered) by the judge advocate; the money for this purpose will be supplied by such pay officer as may be designated upon the written order of the senior officer present, and the judge advocate receiving the money for the purpose named shall furnish the pay officer concerned with a proper receipt.

The certificate of the judge advocate, recorder, deck court officer, or officer before whom a deposition is taken will be evidence of the fact and period of attendance and place from which summoned, and said certificate shall be made on the voucher.

Upon execution of the certificate the witness will be paid upon his discharge from attendance, without awaiting performance of return travel. The charges for return journeys will be made upon the basis of the actual charges allowed for travel to the court, or place designated for taking a deposition. No other items will be allowed.

Travel must be estimated by the shortest usually traveled route—by established lines of railroad, stage, or steamer—the time occupied to be determined by the official schedules; reasonable allowance will be made for unavoidable detention.

If no pay officer be present at the place where the court sits, the accounts, properly authenticated as directed above, shall be transmitted to the convening authority or to the nearest naval station to which a pay officer is attached, with the request that the amount be paid by check.

Accounts of civilian witnesses are not transferable.

Signatures of witnesses when signed by mark must be witnessed.

258. Same: Rates for civilian witnesses prescribed by law.—A civilian not in Government employ, duly summoned as a witness before a naval court, or at a place where his deposition is to be taken for use before such court, will receive \$1.50 a day for each day of actual attendance and for the time necessarily occupied in going and returning, and 5 cents a mile for going from his or her place of residence and return. A civilian witness not in the Government employ who attends a naval court or at a place where his deposition is to be taken, at a point so far removed from his residence as to prohibit re-

turn thereto from day to day, will receive, in addition to the compensation provided above, \$3 for expenses of subsistence for each day of actual attendance and for each day necessarily occupied in traveling to attend court and return home.

259. Same: Civilian witnesses in several trials on same day.—A civilian attending as a witness in several court-martial trials on the same day is entitled to a separate fee for attendance in each case, but will receive mileage in only one case.

260. Same: Civilian witnesses in Government employ.—Civilians in the employ of the Government, when summoned as witnesses, shall be allowed their actual expenses for travel and subsistence while going to and returning from the court, and for actual and necessary reasonable expenses for board and lodging while in attendance thereon. If the court is in session at the place where the civilian witness in the employ of the Government is stationed, he shall receive no allowance.

261. Privilege of witness in not answering particular questions.—Although every person is amenable to the service of process to appear and testify, a witness may be privileged with respect to certain testimony, or there may be certain matters concerning which he may claim the privilege of not testifying. This privilege should be distinguished from the incompetency attaching to certain testimony, as of husband and wife, and of an attorney as set forth in sections 238 and 239. The principal cases of privilege are:

(a) *State secrets*.—This class of privilege covers all the departments of the Government, and its immunity rests upon the belief that the public interests would suffer by a disclosure of state affairs. The scope of this class is very extended, and the question of the inclusion of a given matter therein is decided by a consideration of the requirements of public policy with reference to such matter.

(b) *Criminating questions*.—All questions whose answers would expose the witness to a criminal prosecution or penal action come under the head of criminating questions. A witness may properly decline to answer a criminating question. If the declination be sustained by the court, no inference therefrom or comment thereon is permissible.

(c) *Degrading questions*.—A witness may also properly decline to answer where the inquiry is as to collateral, irrelevant, or immaterial matters on the ground that his answer will have the direct effect of degrading or disgracing him, as, for example, in a case where his answer could have no effect upon the case except to impair his credibility. He may, however, be compelled to answer as to a matter which is material to the issue or trial, notwithstanding the fact that

his answer may tend to disgrace him or bring him into disrepute, unless his answer would also tend to incriminate him in addition to degrading him.

262. Same: The accused.—The accused not only has an absolute privilege not to testify, but it must explicitly appear that he waives this privilege before he can be allowed to testify. Having elected to take the stand in his own behalf the accused occupies the same status as any other witness. The accused is not disqualified because of his presence in court during the examination of all other witnesses, although this may have great influence on the weight to be given his testimony.

263. Privilege is personal.—The privilege of declining to answer on ground of incrimination or self-degradation is a purely personal one and can be claimed only by the witness himself, and not by the accused, counsel, or any other person. In proper cases, however, the court may, in its discretion, inform the witness of his rights. The accused can not object to such testimony, and the witness may waive his privilege and testify in spite of any objection coming from the accused, his counsel, or any other person. If the witness claim this privilege, but is nevertheless required to testify, it is a matter exclusively between the court and the witness.

264. How privilege is claimed.—When a witness wishes to be excused from answering a question he should state in specific terms on what ground privilege is claimed. It is for the court to decide whether or not the privilege should be allowed. The witness should not be required to detail wherein his answer would incriminate or disgrace, but should make clear upon what ground he is basing a refusal to answer. Both the question and the ground of refusal should appear in the record.

265. Rule for deciding whether witness should answer the question when privilege on the ground of self-incrimination is claimed.—To entitle a witness to the privilege of silence, the court must see from the circumstances of the case and the nature of the evidence which the witness is called to give that there is reasonable ground to apprehend danger to the witness from his being compelled to answer. In order to assist the court in deciding whether to require the witness to answer, it is proper to inquire into the merits of his refusal to answer and afford him the opportunity to substantiate his contention that such answer would, in fact, incriminate him. If the party examining the witness requests he be compelled to answer, the court will then decide, in accordance with the above, whether the answer will tend to incriminate him and, if so, will not require the witness to answer. If there is no reasonable apprehension of incrimination,

then the witness should be compelled to answer or be cited for contempt. The danger to be apprehended must be real and appreciable with reference to the ordinary operation of the law in the ordinary course of things. It is not sufficient if the danger is of an imaginary and unsubstantial character having reference to some barely possible contingency so improbable that no reasonable man would allow it to influence his conduct.

If the witness has been previously tried in connection with the matter about which he is called upon to testify, his claim of privilege is not valid, the danger having ceased. Completion of the trial is the test and the trial is deemed to be complete when jeopardy is complete.

If the privilege claimed be on the ground of self-incrimination and the answers when made under compulsion thus tend to incriminate the witness, then such answers can not subsequently be put in evidence in a criminal proceeding against the witness. However, no such right accrues to the person compelled to answer a degrading question.

266. Order for introduction of evidence.—The proper and usual order and sequence for the introduction of evidence is as follows: First, by the prosecution; second, by the defense; third, rebuttal by the prosecution; fourth, surrebuttal by the defense. The beginning and end of each of these steps should be noted in the record. The court may, in the interests of justice, allow evidence to be introduced out of the above order and may, for satisfactory cause, allow the prosecution or the defense to introduce evidence at any time before arriving at its findings thereon, but it shall not thereafter receive any new evidence. The court may also permit a case once closed by either or both sides to be reopened for the introduction of evidence previously omitted, or newly discovered, if convinced that such evidence is so material that its omission would leave the investigation incomplete. In all such cases both parties must be present, and any evidence thus received would be subject to cross-examination and rebuttal by the party to whom it may be adverse. All evidence, whatever its nature, shall be recorded in the proceedings in the order in which it is received by the court.

267. Rebuttal.—During the rebuttal evidence may be introduced by the prosecution to explain or repel the evidence introduced by the defense. In general, anything may be given as rebutting evidence which is a direct reply to that produced by the other side. The judge advocate may rebut any new matter by evidence in rebuttal; he may impeach the testimony of witnesses for the defense, or may sustain the credibility of his own witnesses.

The evidence here introduced should, in general, be confined to such as relates to evidence introduced by the defense.

268. Surrebuttal.—The defense is accorded an opportunity in the surrebuttal to overcome matters brought out in the rebuttal; that is, the defense may here attempt to sustain its original evidence. The evidence here introduced should, in general, be confined to that brought out in the rebuttal.

269. Witnesses examined apart from each other.—Witnesses are examined apart from each other; no witness is allowed to be present during the examination of another. Before the charges and specifications are read to the accused, the president of the court directs all witnesses to withdraw and not return until they are officially called. At the outset of each day's proceedings the direction to withdraw shall be repeated to all who are cited as witnesses and may chance to be present. Obviously, these instructions do not operate in any case to exclude members, judge advocate, the accused, or his counsel when it is necessary for them to be called as witnesses. When the court has finished with a witness he shall be directed to withdraw, and a minute shall be entered on the record to the effect that the witness withdraws in order to show that two witnesses are not in court at the same time.

Should a witness inadvertently be present during the examination of another witness, or should he be present even in violation of the court's order, he is not thereby disqualified from testifying, but such fact should be brought out in cross-examination as affecting the credibility of the witness.

270. Objections to witnesses.—Any objection to a witness' competency should be made before he is sworn. Should his incompetency later appear, however, a valid objection should be sustained, or the court, of its own motion, should refuse to hear him further, and order that any testimony he may have already given be expunged from the record. A witness challenged as to competency may be examined relative thereto on oath administered on *voir dire* before he is regularly sworn as a witness.

271. Objections to questions or testimony.—Should objection be made to any propounded question or to the reception of any testimony, the court shall proceed at once to determine the matter; and the question or testimony objected to, with the decision of the court thereon, shall be recorded in full in the minutes of proceedings.

272. Order for examination of witnesses.—The proper order for the examination of a witness is as follows: First, direct examination by the party who calls him; second, cross-examination by the opposite party; third, redirect examination; fourth, recross-examination.

The court may, in the interest of justice, allow further examination by the parties. Any member of the court may put questions to the witness; such questions are subject to objection in the same manner as are questions by parties to the trial. Upon new matter elicited by the examination of the court, the judge advocate and the accused may further examine the witness.

273. Direct examination or examination in chief.—Testimony is ordinarily given orally in court in the form of answers to questions put to the witnesses by both sides. A witness is first questioned, or examined, as it is called, by the side which calls him; such examination being termed his direct examination or examination in chief. This direct examination forms the basis for further examination. But such further examination can not properly be used to extend the scope of the witness' testimony. All facts desired from a witness must be brought out in the direct examination. If additional facts be attempted to be brought out in any subsequent examination of the witness they may be objected to. A witness must identify himself and then he must identify the accused, if possible. These preliminary questions are asked by the judge advocate. The examination is then continued by the side calling the witness. All questions and answers are recorded in full, and as far as possible in the exact language of the witness. If an objection is made to a question, the reason for the objection will be stated.

274. Identification of accused.—The identity of the accused should be carefully proved, both for the establishment of the court's jurisdiction over him, and also for proof of his actual complicity in the offense where any doubt is raised on this point.

This identification of the accused involves two distinct elements, first, that the person now in court as accused is the same person described in the charges by name, rank, and station; second, that the person now in court as accused (irrespective of his name, etc.), is the very person who did the act charged and to which act the witnesses' testimony will refer. The first of these elements is usually proved by witnesses who know the accused and the facts as to his rank and organization, and when necessary, by official records or duly authenticated copies. The second element involves the question whether the person now in court (his name, etc., being assumed to be otherwise duly evidenced) was the actual person who committed the offense charged. Whenever this fact is disputed, care must be taken to offer all available evidence that may serve to remove doubt as to identity; for no injustice is more pronounced than that of convicting an innocent person by reason of mistaken identity.

275. Leading questions.—On the examination in chief leading questions are generally improper. A leading question means what its name indicates—one which leads the witness up to the desired answer; i. e., one which is put in such a way as to suggest to the witness the answer which is expected or wanted. There is no particular form which will make a question leading, or will save it from being such. The fact that the question is put so as to require a categorical answer does not necessarily make it leading, though it may do so; nor does the fact that the question is prefaced by “whether or not”, so as to avoid a categorical answer, save it from being leading. A question is not necessarily leading because it may be answered “yes” or “no.”

276. Same: Illustrations.—The question, “State whether or not you, in substance or effect, addressed the defendant as one of those concerned in the transaction”, is clearly leading and is also a double question. It was then changed to, “How did you address the defendant in respect to his being one of the persons concerned?” and still held to be leading. The question, “Did you hear the accused say he did not intend to come back?” is leading. The proper form would be, “Did the accused say anything?” If the answer is in the affirmative, add “State what he said.” On a knife being introduced into evidence a witness should not be asked on direct examination “Is this the knife you saw the accused stab deceased with?” He should first be asked whether he recognizes the knife, and if he answers that he does, then he may be asked where he saw it before, and what was done with it.

277. Same: When allowed.—Leading questions are allowed:

(1) To abridge the proceedings the witness may be led at once to points on which he is to testify. The rule as to leading questions is not applicable to that part of the examination of the witness which is purely introductory. For example, in a desertion case where the accused admits that on a certain day at a certain place he was apprehended as a deserter by a policeman, the latter when on the stand may have his attention directed at once to the occasion by such a question as whether at a certain time and place he arrested the accused as a deserter. The witness having answered the question in the affirmative, in the next question he might properly be asked to state the details connected with the arrest. So in a case of disobedience of orders where there is no dispute that the alleged disobedience took place at a certain time and place, and that it involved certain persons, the witness might properly be asked whether he was present at the place where and time when the accused was placed in arrest by a certain officer for not carrying out a certain order. The witness having answered in the affirmative, he may be asked to state all the circumstances.

(2) When the witness appears to be hostile to the party calling him or is manifestly unwilling to give evidence.

(3) When there is an erroneous statement in the testimony of the witness, evidently caused by want of recollection, which a suggestion may assist, as, for instance, where he misstates a date or an hour.

(4) Where, from the nature of the case, the mind of the witness can not be directed to the subject of the inquiry without a particular specification of it, as where he is called to contradict another witness who has testified that the accused made a certain statement on a certain occasion in the hearing of a number of enlisted men.

(5) In order to expedite the trial, if this will not prejudice the rights of the accused, or the prosecution.

(6) By the court, in its discretion, when necessary to elicit facts.

278. Double questions.—Double questions are questions embodying two or more separate elements or questions, and should never be permitted. For example, the question "Did you see the accused leave his quarters with a bundle under his arm?" is, besides being leading, a double question. It consists really of three questions, viz: (1) Did you see the accused? (2) If so, was he leaving his quarters when you saw him? and (3) If so, did he have a bundle under his arm? Manifestly the witness may have seen the accused at the particular time in question and yet not have seen him leave his quarters and not have seen him with a bundle under his arm; or he may have seen him leave his quarters but without a bundle under his arm, or he may have seen him with a bundle under his arm but not leaving his quarters; or, again, he may have seen him (either leaving his quarters or otherwise) with a bundle, but not under his arm. Each of these various circumstances may very possibly have a material bearing on the case. The injustice of such a question, both to the witness and to the accused, and its misleading effect, is apparent from a consideration of the fact that if the witness be required to answer "yes" or "no" to such a question, which requirement may be insisted on in cross-examination to a question that may properly be so answered, he may, for instance, answer "no", meaning simply that the accused, when he saw him, did not have a bundle under his arm, or perhaps meaning that although he saw the accused with a bundle under his arm, he was not then in the act of leaving his quarters. But the negative answer may be construed as a complete denial of having seen the accused at all. On the other hand, if he should answer "yes", he might mean simply that he saw the accused at the time, or saw him leaving his quarters, whereas his answer would be construed as meaning that he not only saw him, but also leaving his quarters, and with a

bundle under his arm. Such a question must never be permitted to be asked of a witness at any time or under any circumstances.

279. Questions calling for opinion or conclusion of witness should not be allowed.—A witness must state facts and not his opinion as to facts, or, as it is technically termed, he must not testify to conclusions. It follows as a general rule that a question calling for the witness' opinion is objectionable.

280. Refreshing recollection.—A witness whose memory fails him on a particular point may be allowed, ordinarily, to refresh his recollection, if able to, by means of memoranda that he may have. If, after consulting the memoranda, he is able to recall a fact and can then testify positively as to such fact from his present recollection—that is to say, if the memoranda stimulate his memory so that he is then able to picture the original fact in his mind and can testify positively as to such fact—he may do so, and it is not necessary that the memoranda should have been made by the witness. In such case the memoranda are not evidence. It is only the witness' testimony that is evidence, and he testifies independently from his present recollection, although such recollection is *aroused* by the memoranda. For example, a witness may not be able to recall a certain conversation with the accused and others. but, upon being shown a letter written by one of the others concerning the conversation, he may be able to recall the entire transaction and testify about it fully. His testimony being entirely independent of the letter may be directly contradictory to it.

281. Supplementing recollection.—Memoranda are used in another way—the distinction between the two ways is important—to supplement recollection. In many cases a witness is unable to testify as to a certain fact from his present recollection, but can testify only that he made a memorandum of such fact and that the statement which he made in the memorandum is true, or that he personally knows that a memorandum made by another was truly made. The memorandum must have been made when the matter was fresh in recollection, but the time depends on the circumstances of each case. The memorandum must be identified and is then admissible in evidence. In the majority of cases it is probable that the inspection of a memorandum by a witness does not in fact refresh his recollection so that he can then testify independently of the memorandum. The witness should then merely testify that the memorandum was correct when made. The court should see to it that no attempt is made to use such a paper to impose a false memory on the witness under guise of refreshing it.

In any case it is error for a witness to testify from memoranda.

282. Cross-examination.—The power of cross-examination is the most efficacious test which the law has devised for the discovery of truth. It is not easy for a witness, who is subjected to this test, to impose on a court or jury; for, however artful the fabrication of falsehood may be, it can not embrace all the circumstances to which a cross-examination may be extended. In general the cross-examination will be limited to matters brought out by the direct examination of the witness, but in the discretion of the court minor exceptions may be made to this rule.

As it is the purpose of the cross-examination to test the credibility of the witness, it is permissible to investigate the situation of the witness with respect to the parties and the offense, his interest, his motives, inclinations, and prejudices, his means of obtaining a correct and certain knowledge of the facts to which he bears testimony, the manner in which he has used those means, his powers of discernment, memory, and description. Leading questions may be freely used on cross-examination.

While a wide latitude should be allowed in cross-examination, courts should distinguish between the legitimate ends of cross-examination and the mere pointless harassing of a witness and should not permit the former bounds to be passed.

283. When answer is conclusive.—The answers of a witness to questions which tend to discredit him are conclusive if such questions relate to collateral matters. The inquiry can not be further extended by producing testimony of a contradictory nature. If, however, the false answer is given with reference to a matter relevant to the issue, the cross-examiner is by no means precluded from proceeding.

284. Cross-examination of accused.—An accused person may at his option take the stand as a witness, and in so doing he occupies no exceptional status and becomes subject to cross-examination like any other witness. The same rules as to the admissibility of evidence, privilege of the witness, impeaching of his credit, etc., will apply to him as to any other witness, and the only noticeable difference between his examination and that of other witnesses will be that he will in general, naturally and properly, be exposed to a more searching cross-examination. So far as the latitude of the cross-examination is discretionary with the court, a greater latitude may properly be allowed in his cross-examination than in that of other witnesses, but, like them, he may not be cross-examined beyond the charges on which he was examined in his direct examination, except to test his credibility as a witness. The accused having once taken the stand may be recalled, despite his objection, at any time during the

proceedings, at the discretion of the court, for the purpose of examination or further cross-examination, to explain matter brought out in his original testimony.

Where the accused testifies in denial or explanation of any specification, the scope of his direct examination is considered to be the whole subject of his guilt or innocence of *that* offense. Any fact relevant to the issue of his guilt or relevant to his credit as a witness is properly the subject of cross-examination. If the accused fail to take the stand at all, this failure must not be commented on, for such comment would violate his privilege to remain silent. But if he testify and if he fail in such testimony to deny or explain specific facts of an incriminating nature that the evidence of the prosecution tends to establish against him in relation to the charge or charges on which *he has testified*, such failure may not only be commented upon by the judge advocate but may be considered by the court, with all the other circumstances, in reaching their conclusion as to his guilt or innocence. Where, however, an accused is on trial for a number of offenses, and, taking the stand in his own defense, testifies to one or more of them only, he cannot be cross-examined as to the others, and no comment can be made or inference drawn from his failure to testify as to the others. If the defense has put the accused's character in evidence before the accused testifies, the accused may be cross-examined as to his general character.

285. Contradictory statements.—The foundation for impeaching a witness by proof of contradictory statements must be laid on cross-examination.

286. Redirect and recross-examination.—Ordinarily the redirect examination will be confined to matters brought out on the cross-examination, and the recross-examination will be confined to matters brought out on the redirect examination. But in these matters the court, in the interest of truth and justice, should be liberal in relaxing the rule. Whenever a redirect examination is allowed, a recross-examination must also be allowed.

287. Examination by the court.—A member may put questions, but since members must be impartial and without prejudice, their questions should, in general, be for the purpose of making clear the meaning of testimony already given. The court should not originate evidence (but see sec 252). To do so lays it open to animadversion, and should be scrupulously avoided. The court has the right to put questions to a witness at any time, but ought to make no interrogation until the examination by the parties has been completed. It generally happens that any doubt in the minds of the court arising

during the examination of a witness is cleared up before the parties finish with him.

A question by a member may be put directly to a witness without submitting it first to the court; if, however, it is objected to and ruled out, it must be recorded as "by a member." If received, it is recorded as "by the court."

288. Further examination of witness to be allowed after examination by the court.—If a witness is examined by the court, an opportunity should be afforded the judge advocate and the accused, respectively, to reexamine and recross-examine the witness upon new matter brought out by the court's examination. Before the witness is excused the court will ask him if he has stated everything within his knowledge in relation to the charges (explaining what the charges are), and if the answer is in the negative, the court will then ask him to so state. When the witness is excused the record will be made to state affirmatively that neither the court, the judge advocate, nor the accused had any further questions to ask the witness. If any step in the examination of a witness is omitted by reason of the fact that the party whose turn it is to examine does not desire to ask any questions, the record must, by a suitable entry, show that such opportunity was afforded; thus, "The accused did not desire to cross-examine", etc.

289. Questions to witness to be in writing.—Questions to be propounded to a witness shall be reduced to writing, except in cases where the court has a competent stenographer as reporter.

290. Authority of naval courts to punish contempts.—The forty-second A. G. N. gives a court authority to punish contempts. The article is not construed as extending the authority to punish for contempt to a summary court martial or deck court.

291. The president may caution a witness.—This caution may be given at the request of a member, the judge advocate, any party to the trial, or on the president's own initiative, when the court deems it advisable to warn a witness that his conduct is such that he will likely be held in contempt of court.

292. Procedure when witness is charged with contempt.—When a witness is charged with contempt, the regular business of the court should be suspended, and he should be given opportunity to reply. The action taken is properly summary, a formal trial not being called for. If the reply is satisfactory, the proceedings for contempt may be ended. A witness can not, however, purge himself of contempt by insisting that his language or behavior was proper. The testimony of a witness who has been adjudged guilty of contempt may be continued.

293. Place of confinement of a witness adjudged guilty of contempt.—The place of confinement for a witness in the naval service who is adjudged guilty of contempt and is sentenced to confinement should be left to the commanding officer of the person concerned. A communication, signed by the president, to such commanding officer should state the offense, the sentence, and the authority therefor. The authority is the fact that the court was duly and regularly authorized and was acting within its authority.

294. In case a civilian witness is adjudged guilty of contempt the district attorney should be informed.—If possible, before a civilian witness in contempt before a general court martial or court of inquiry is permitted to withdraw, the Federal district attorney should be communicated with in order that the witness may be apprehended expeditiously. The law does not give a naval court authority to restrain such witness of his liberty as in the case of naval witnesses. Even though the witness has departed from the jurisdiction within which the court martial sits, the district attorney may cause his arrest in another jurisdiction, as the offense is one against the United States.

295. Verification of testimony.—The recorded testimony of a witness shall be read to or by him in order that he may verify, correct, or amend it, only upon the direction of the president of the court, when such a request is made by the judge advocate, any member of the court, or the accused. If it has been directed by the president of the court that the testimony of a witness be read to, or by him, in order that he may verify, correct, or amend it, and it is desirable, the judge advocate may request the court to permit the witness to report at a subsequent time, in order to correct, or verify his testimony. If the correction or amendment is material, the witness may be further examined on the subject matter affected by the correction.

296. Manner of correcting testimony.—When a witness has been directed to verify his testimony in accordance with the preceding section this may be accomplished in either of two ways: First, the witness may be present during the reading of so much of the record as contains his testimony, and, during such reading, make necessary changes or verify it; or, second, he may be furnished with so much of the record, or a copy thereof, as contains his testimony, to be read over by him out of court, after which he is called before the court to correct, amend, or verify it. The judge advocate may correct obvious clerical errors out of court before the witness is called upon to verify his testimony.

297. Witness may be warned not to converse upon matters pertaining to the trial.—The reason that no witness is permitted in court during

the examination of another witness is to prevent either the deliberate or unconscious coloring of the testimony of any witness. For exactly these same reasons it is highly undesirable and improper for witnesses to an occurrence which may probably be the subject of judicial investigation to converse with each other concerning the testimony which they would give should they be called as witnesses, or, having testified, to disclose to persons not present the testimony which they gave, or to converse with anybody, including those present in the court room, concerning the details of the testimony given by them. This prohibition, of course, is not intended to prevent legitimate conversations between persons officially interested in the case and bona fide witnesses, but it is intended to prevent any conversations with any persons whatever that will influence any testimony, directly or indirectly, that is to be given before the court.

The following rules are therefore laid down in regard to warning witnesses to refrain from discussing matters pertaining to the trial:

(a) It is competent for the judge advocate or the counsel for the accused to warn prospective witnesses against conversations as to the details of the case with any person other than a party to the trial.

(b) The court should especially direct any witness who has testified in a case to refrain from disclosing, either directly or indirectly, any part of the testimony he has given, and from conversing with any person whatsoever concerning the details of his testimony. This warning, however, will not preclude the judge advocate or counsel for the accused from legitimate conversation with the witness, neither shall it be given to a member of the court, the judge advocate, the accused, nor the counsel, should they become witnesses.

(c) The court may also call all the witnesses in the case and instruct them not to converse with any person, other than the parties to the trial, concerning any feature of the case whatsoever, and not to allow any witness who has testified to communicate in any manner anything to them concerning testimony given on the stand.

(d) In exceptional cases the court may take the necessary steps to segregate the witnesses, either before or during the trial, in order to prevent intercommunication, and it may require that all communication between a witness who has testified, or a prospective witness, and counsel, judge advocate, or any other party, be in the presence of a provost marshal.

In brief, while in many cases of a routine nature it is not considered necessary to take special steps to safeguard the testimony, the court has full authority at any time to take such steps as may be necessary to insure the inviolability and the uncolored veracity of the testimony that is to be given.

298. Impeachment of a witness.—The testimony of a witness may be impeached: (1) By disproving the facts testified to by him; (2) by proof of contradictory statements previously made by him as to matters relevant to his testimony and to the case; and (3) by attacking the witness' general credibility.

299. Impeachment by proof of contradictory statements.—Evidence looking toward the impeachment of a witness by proof of contradictory statements previously made by him is competent only in respect of matters that are relevant and material to the charge. Before contradictory statements of a witness can be proved against him his attention must be called with as much certainty as possible to the time, place, attending circumstances, and persons to whom the statements have been made. If such statements were made in writing they should be shown the witness for identification. It is not sufficient to ask a witness in general whether he did not at some time make a different statement; but, in order to prepare the way for impeaching evidence, it is necessary first to ask the witness upon cross-examination whether he did not, on a specified occasion, make a diverse statement (specifying it) to a person named. When the impeachment is to be made by the testimony of other witnesses, care must be taken to lay the groundwork, as indicated above, for subsequent impeachment while the witness to be impeached is on the stand. Unless such foundation is laid, it is improper for the court to admit the impeaching testimony.

300. What credibility consists in.—The credibility of a witness is his worthiness of belief, and is determined by his character, by the acuteness of his powers of observation, the accuracy and retentiveness of his memory, by his general manner in giving evidence, his relation to the matter in issue, his appearance and deportment, prejudices, by his general reputation for truth and veracity in the community where he lives, by comparison of his testimony with other statements made by him out of court, by comparison of his testimony with that of others, etc.

301. Attacking general credibility of a witness.—The general credibility of a witness may be attacked in cross-examination, or by evidence tending to show his general bad reputation as to veracity. The fact that a witness has been convicted of a crime involving moral turpitude, particularly if involving his veracity, as falsehood or fraudulent enlistment, may also be brought out as bearing on his credibility. There must have been a conviction by a court. Evidence of mere accusation or indictment is inadmissible. The state of the feelings of the witness and his relationship to the parties may always be proved for the consideration of the court. In all cases

it is for the court to determine the weight to be given a particular witness.

302. Proof of character by general reputation.—Where impeachment of a witness for bad character is undertaken, it must be limited to proof of his general *reputation* for truth and veracity in the community in which he lives or pursues his ordinary vocation. For a naval man this would mean the reputation that he bore among his shipmates, at his station, or, if stationed at or near a town, among the residents of the town. Personal opinion as to his *character* is not admissible, except that a witness may, after testifying that he knows the *reputation* of the person in question as to truth and veracity in the community in which he resides or pursues his ordinary vocation, and that such reputation is bad, be further asked whether or not from his knowledge of such *reputation* he would believe the person in question on oath.

303. A party may not impeach his own witness—Exceptions.—The general rule is that a party is not permitted to impeach the credibility of his own witness, but this does not mean that he can not introduce other testimony as to a particular fact which is directly contradictory to the testimony of such witness. Exceptions to the general rule are: (1) When the witness appears to be hostile to the party that calls him; (2) when a party is under the necessity of calling a particular person as a witness; (3) when the party that calls a witness is unduly surprised at the evidence elicited, and in this case the foundation must be laid.

304. What evidence may be considered.—The oath taken by members of general and summary courts-martial requires them to try and determine “according to the evidence” the case depending; that taken by the members of a court of inquiry, to examine and inquire “according to the evidence” the matter before them. A deck court and boards not required to take such an oath will also determine the matter before them solely on the evidence in the case. The evidence thus referred to, according to which the court must decide the case, means all the matters of fact which the court permits to be introduced, or of which it takes judicial notice, with a view to prove or disprove the charges. Every item of this evidence must be introduced in open court, and it would be seriously irregular and improper for any member of the court to convey to other members, or to consider himself, any personal information that he possessed as to the merits of the case or the character of the accused without stating it in open court. But while their knowledge of the facts must come to them from the evidence, the members are expected to utilize their

common sense, their knowledge of human nature, and the ways of the world in weighing the evidence and arriving at a finding. In the light of all the circumstances of the case they should consider the inherent probability or improbability of the evidence given by the several witnesses, and with this in mind the court may properly believe one witness and disbelieve several whose testimony is in conflict with that of the one.

Members of courts and boards, in their capacity as judges, must pass upon the admissibility of evidence; and, as jurors, weigh it.

305. Weighing evidence.—In weighing evidence the court may consider: (1) The witness' manner of testifying; (2) his intelligence; (3) his means and opportunities of knowing the facts to which he testifies; (4) the nature of the facts to which he testifies; (5) the probability or improbability of his testimony; (6) his interest or want of interest; (7) his personal credibility, so far as it legitimately appears upon the trial; (8) the number of witnesses, subject to the remarks in the following section; (9) all the facts and circumstances of the case.

306. Weight of evidence as affected by the number of witnesses.—The relative number of witnesses for the prosecution and the defense is by no means decisive in general, as the relative weight of the evidence depends much less upon the number of witnesses than upon their character, their relation to the case, and the circumstances under which their testimony is given. The "weight of evidence" is not a question of mathematics, but depends on its effect in inducing belief. It sometimes happens that one witness, standing uncorroborated, may tell a story so natural and reasonable in its character and in a manner so sincere and honest as to command belief, although several witnesses of apparent equal respectability may contradict him. The question for the court is not on which side are the witnesses the more numerous, but what evidence does it believe.

307. Weight to be given testimony of the accused.—The fact that a witness is the accused does not condemn him as unworthy of belief, but does create in him an interest greater than that in any other witness, and to that extent affects the question of credibility. It is a general rule that the relations of a witness to the matter to be decided are legitimate subjects of consideration in respect to the weight to be given to his testimony. In every case the testimony of an accused should be considered in connection with all the evidence adduced and given such weight as the court may believe it merits.

308. Weight of court of inquiry proceedings as evidence.—The weight to be attached by the court martial to proceedings of a court of

inquiry that have been received in evidence is a matter for determination by the court, the same as in the case of any other evidence.

309. Judicial notice.—The evidence introduced in the trial is supplemented by facts of which the court takes judicial notice; that is, by facts which the court knows to be true without any evidence to prove them. Courts should take judicial notice of: (a) Facts forming part of the common knowledge of every person of ordinary understanding and intelligence, such as qualities and properties of matter; well-known scientific, historical, physiological, and geographical facts; time, days, and dates; the composition and use of articles in common use; the character of a weapon as deadly or not; nature of familiar games and terminology thereof; existence, appearance, and value of money; well-known facts as to the characteristics of animals in general but not of a particular animal; language, words and phrases, well-known slang expressions, and abbreviations. (b) Matters which are so easily ascertainable in authentic form that the court may readily inform itself by reference to some authentic, accessible source of information, such as the name of the present United States ambassador to Italy; the time of sunrise on a given day from the Nautical Almanac, etc. (c) Matters which the court is bound to know as a part of its own special duty and function, such as the United States Constitution, treaties, and statutes, and the statutes of the State, Territory, District of Columbia, or possession of the United States within which the court is sitting; Navy Regulations, general orders, and bureau manuals, including the Marine Corps Manual; the organization of the Navy Department, of United States fleets, and the names of officers connected therewith in the higher positions; prices of articles furnished by the Government when published in general orders; court-martial orders; official drill books; general orders of the command in which the court is sitting, etc.

Matters of which courts may take judicial notice need neither be charged nor proved. Where the court entertains any doubt as to the propriety of taking judicial notice of a fact, it should require it to be proved like any other fact.

A court may not take judicial notice of a foreign law, or of a law of another State, etc., than that within which the court is sitting, the existence of such law being a question of fact which must be proved by competent evidence the same as any other fact—i. e., the purport or the actual wording of the law must be introduced into the evidence—and it must be further shown that the law or regulation was in force at the time when the alleged act in violation thereof took place.

The proper way to have the court take judicial notice of a fact not carried in mind by all intelligent men is for the party desiring it to request that the court take judicial notice, for example, of 2 U. S. Code 118, and to furnish the court at the time with an official or otherwise trustworthy copy thereof.

310. Presumptions.—The evidence introduced in a case is also sometimes supplemented by presumptions. A presumption is a rule of law annexing to certain evidential facts a legal significance. Such presumptions are of two kinds, according to the legal significance attached; namely, (a) *rebuttable* presumptions and (b) *conclusive* presumptions.

311. Same: Rebuttable.—A rebuttable presumption is an assumption made by law that an inference of fact is *prima facie* correct. This presumption places the burden of rebuttal upon the party against whom it operates. In the absence of evidence to the contrary the law presumes that:

(a) A person owns the property which is in his possession.

(b) A person between the age of 7 and 14 is incapable of entertaining criminal intent and, therefore, incapable of committing crime.

(c) A person is sane.

(d) A promissory note has been issued on valuable consideration.

(e) There is identity of person from identity of name (depending upon the circumstances).

(f) When an instrument is more than 30 years old the party whose signature appears thereon duly signed it.

(g) A person who has not been heard from in seven years is dead.

(h) A letter duly directed and mailed was received in the regular course of the mail.

(i) Official duty has been regularly performed.

(j) When a man and woman have lived together as husband and wife and have been commonly reputed as such they have been properly married.

(k) A child born of a married woman during wedlock is legitimate.

(l) An unlawful act was done with unlawful intent.

(m) A publication purporting to have been printed or published by public authority was so printed or published.

(n) A publication purporting to contain reports of cases adjudged in judicial tribunals of the place where published contains correct reports of such cases.

312. Same: Conclusive.—A conclusive presumption is an assumption made by law that an inference of fact is conclusively correct.

It forbids of any evidence being introduced to the contrary. The law, for example, conclusively presumes that a child under 7 years of age is incompetent to commit crime. Strictly speaking, presumptions of this class are not presumptions at all but matters of substantive law. As such they do not belong to the subject of evidence.

CHAPTER IV

INSTRUCTIONS FOR COURTS MARTIAL

325. The provisions of this chapter are to be observed by general and summary courts martial, and, except where manifestly inapplicable, by deck courts. The recorder of a deck court performs the general duties of a reporter. Instructions herein for the judge advocate or recorder apply also to the deck court officer, with the foregoing qualification. The term "president" shall be read "senior member" where applicable; the term "judge advocate" also, in general, includes a recorder. The term "charges and specifications" will be read "specifications" in relation to summary courts martial and deck courts.

326. Jurisdiction of a court.—The jurisdiction of a particular court is the legal power, right, or authority of such court to hear and determine cases legally referred to it and to adjudge sentences within prescribed limitations.

327. Jurisdiction of naval courts martial.—As naval courts martial are courts of limited jurisdiction, their records must show affirmatively that they have authority to hear and determine cases coming before them for trial. A particular court martial has authority to try men specifically ordered tried by it, and has no authority to try a man ordered tried before another court. The jurisdiction of such courts martial is statutory and is limited to offenses that are provided for in, or are within the purview of, the articles for the government of the Navy and other enactments of Congress. The jurisdiction thus conferred is exclusively criminal in character, being solely for the purpose of the maintenance of naval discipline. In order that a naval court martial may conduct a legal trial and adjudge a valid sentence, it is necessary that the jurisdiction of such court be established.

328. Conditions necessary to show jurisdiction.—The following are necessary conditions to the jurisdiction of every naval court martial:

- (a) It must be convened by an officer duly empowered to do so.
- (b) It must be legally constituted; that is, it must be composed of members authorized by statute to sit upon such court.
- (c) There must be jurisdiction as regards (1) place, (2) time, (3) person, (4) offense.

329. Same: Convened by an officer empowered to do so.—The officers who are empowered to convene a general court martial are named in the articles for the government of the Navy and subsequent statutes. Where an officer is not authorized by law, but specially authorized by the Secretary of the Navy (under arts. 26, 38, and 64, A. G. N.) to convene a court martial, the precept must cite the authorization in order to show affirmatively the jurisdiction of the court. No one other than the Secretary of the Navy can give such authority.

The reviewing power as well as the convening power of a court martial vests in the office, not in the person of the authority so acting. When the officer who has ordered the court has been relieved or is absent, it is competent for his successor in office, whether temporary or permanent, to act as reviewing authority.

In the case of a summary court martial the court must be convened by the commanding officer of the accused. The precept and the specification must both be signed by the commanding officer of the ship, station, etc., to which the accused is attached at the time of trial. This holds true although the accused be but temporarily attached to the ship or station.

330. Same: Legally constituted.—The officers who may be members of a court martial are named in articles 27, 39, and 64 of the articles for the government of the Navy. The judge advocate should be an officer who is skilled in the law. Where there is none such available, an officer to officiate as such may be designated. A retired officer may be ordered as a member of a court martial, and it need not appear specifically on the record that he had been ordered to active duty.

331. Same: Jurisdiction as to place.—The jurisdiction of a naval court martial, except for the offense of murder, extends not only to every part of the United States but also covers all offenses of which it is authorized to take cognizance committed by persons in the Navy, whether within or beyond such territorial limits.

But when the place is necessary to make an offense, as for instance, having a narcotic aboard ship in violation of article 118, Navy Regulations, 1920, the place must be alleged in order to give jurisdiction to the court.

332. Same: Jurisdiction as to time.—As courts-martial do not depend upon a state of war for their jurisdiction, except in the case of a limited number of offenses which pertain solely to a state of war, the jurisdiction of naval courts is restricted in point of time only by the operation of the statutes of limitation. The act of desertion is done and completed at the moment a person absents

himself with the requisite intent. It is not a continuing offense. The two-year period of limitations prescribed by the 61st A. G. N. commences to run, in the case of desertion in time of war, from the date on which the offender first absents himself without leave; the limitation for desertion in time of peace, however, by the 62nd A. G. N. begins to run from the end of the term for which enlisted.

333. Same: Jurisdiction as to persons.—The classes of persons in the naval service and subject to the naval jurisdiction of the United States include all members of the following organizations:

The Regular Navy, active and retired, midshipmen, and the Navy Nurse Corps.

The Naval Reserve, and the Marine Corps Reserve, when employed on active duty, authorized training duty, with or without pay, drill, or other equivalent instruction or duty, or when employed in authorized travel to and from such duty, drill, or instruction, or during such time as they may by law be required to perform active duty in accordance with their obligations, or while wearing a uniform prescribed for the Naval Reserve, or Marine Corps Reserve; and, at all times, enlisted men transferred in accordance with law from the regular Navy or Marine Corps to the Fleet Reserve or Fleet Marine Corps Reserve or retired list; and officers transferred to the retired list of the Naval Reserve Forces or the Naval Reserve or the Marine Corps Reserve with pay.

The Marine Corps, when not detached for duty with the Army by order of the President.

The Coast Guard, the Lighthouse Service, the Coast and Geodetic Survey, and the Public Health Service of the United States, while serving as a part of the Navy in time of war or national emergency.

“In addition to the foregoing classes of persons, those named in the 5th (spies), 14th, 37th, and 62d articles for the government of the Navy, are subject to the provisions of the articles for the government of the Navy and amenable to trial by court martial. Under the laws of war and the provisions of the Geneva (Prisoners of War) Convention of 1929, prisoners of war are subject to the jurisdiction of a naval court martial. Prisoners of war are entitled to the special rights set forth in the Geneva Convention and punishments awarded them should not be any more severe than punishments awarded persons in the naval service for similar offenses. Also, civilians outside the continental limits of the United States accompanying or serving with the United States Navy, the Marine Corps, or the Coast Guard when serving as a part of the Navy, including officers, members of crews, and passengers on board merchant ships of the United States, and including those employed by the Government, or by contractors and

subcontractors engaged on naval projects, and persons within an area leased to the United States which is without the territorial jurisdiction thereof and which is under the control of the Secretary of the Navy, are, in time of war or national emergency subject to the articles for the government of the Navy except insofar as those articles define offenses of such a nature that they can be committed only by naval personnel. Jurisdiction to try civilians by court martial under the foregoing conditions does not, however, extend to Alaska, the Canal Zone, the Hawaiian Islands, Puerto Rico, or the Virgin Islands, except the islands of Palmyra, Midway, Johnston, and that part of the Aleutian Islands west of longitude one hundred and seventy-two degrees west."

A *de facto* enlisted man is subject to the jurisdiction of a court martial. A fraudulent enlistment is still an enlistment, and a man so enlisting may be tried by court martial. But where the man at the time of his enlistment was under an absolute disability to enlist, that is to say, was under the age of fourteen years, or was insane or intoxicated, he can not be legally tried for desertion, nor for fraudulent enlistment if he received no pay or allowances.

334. Same: When jurisdiction over persons terminates.—The jurisdiction of courts martial over officers, midshipmen, nurses, and enlisted men ordinarily ends when they become regularly separated from the service by acceptance of resignation or discharge. However, a discharge obtained by fraud does not oust the jurisdiction of a court martial. The mere expiration of the period of enlistment of an enlisted man, without the concurrence of any other circumstance whatsoever, does not operate to dissolve his status and does not of itself relieve him of liability to military law for offenses committed during the period of enlistment. Discharge by expiration of enlistment does not take effect, notwithstanding delivery of the discharge certificate, until midnight of the last day of service. Discharge at any other time or for any other cause takes effect on delivery of the certificate. An officer dropped from the rolls by order of the President for absence without leave for three months or more, in accordance with the act of April 2, 1918, can not thereafter be tried by court martial, he having by this act become fully separated from the service and become a civilian.

The general rule is subject to the following exceptions:

(a) If any person, being guilty of any of the offenses of fraud, embezzlement, etc., against the United States, while in the naval service of the United States, receives his discharge or is dismissed from the service, he shall continue to be liable to be arrested and held for trial and sentence by a court martial in the same manner

and to the same extent as if he had not received such discharge nor been dismissed. Except for offenses provided for in article 14, A. G. N., a court martial may not try an individual who has been formally separated from the Navy and is no longer in the service unless proceedings were instituted against him while he was in the service. However, if an officer reenters the service and his trial is not barred by the statute of limitations, it has been judicially decided

that he may be tried by court martial and punished for an offense committed during his previous service, whether or not the offense is one for which trial by court martial after separation from the service is specifically authorized by statute. Similarly, the Navy Department has passed cases as legal in which enlisted men have been convicted by court martial of offenses committed in a previous enlistment, although such offenses were not provided for in article 14, A. G. N.

(b) An officer dismissed from the service in time of war by the President may be tried by court martial on his own application, in accordance with the provisions of the 37th article, A. G. N.

(c) Where jurisdiction has once attached it can not be divested by mere subsequent change of status. An officer or man sentenced to dismissal or discharge and imprisonment may be held by the military authorities to serve out the period of imprisonment notwithstanding that the sentence of dismissal or discharge is first executed.

335. Same: Jurisdiction as to offenses.—As naval courts martial are courts of statutory jurisdiction, statutory authority must be found for offenses chargeable before such courts, except for those offenses committed by prisoners of war in violation of the laws of war or treaty provisions. Statutory authority is contained in the articles for the government of the Navy, which define specific offenses against naval law and comprehend other offenses by one broad provision (art. 22). Article 22 provides for the punishment of “all offenses * * * not specified in the foregoing articles.” This provision leaves within the jurisdiction of courts-martial cases not so specified, but recognized as military offenses by the usages of the naval service. The jurisdiction of courts martial extends to the trial and punishment of acts of military or naval officers which tend to bring disgrace and reproach upon the service of which they are members, whether those acts are done in the performance of military duties, or in a civil position, or in a social relation, or in private business.

336. Same: Limitation of jurisdiction over crime of murder.—The 6th A. G. N. provides that “if any person belonging to any public vessel of the United States commits the crime of murder without the territorial jurisdiction thereof, he may be tried by court martial and punished with death.” This precludes a court martial taking jurisdiction of murder committed within the territorial jurisdiction of the United States. If the crime is committed on the high seas or within a foreign country there is no doubt that courts martial having assumed jurisdiction thereof may proceed to a final judgment.

337. Concurrent jurisdiction: Same act may be an offense both against naval law and State or foreign law.—Courts martial have exclusive jurisdiction to try offenders for acts constituting offenses against

naval law only; they also have authority to try offenders for certain acts which, besides constituting offenses against naval law, are also civil crimes of which civil courts may take cognizance. In such cases the same act may be an offense both against naval law and against a State or foreign Government. Therefore, when such offender has been brought to trial in a State or foreign court, he may, nevertheless, thereafter be brought to trial by naval court martial, notwithstanding his conviction and punishment or his acquittal by such civil court, and vice versa.

338. Same: Same act not an offense both against naval law and Federal civil law.—When an act, prohibited both by naval law and the civil law of the Federal Government, is committed within Federal jurisdiction, and the offender is tried either by a court martial or a Federal civil court, both of which derive their jurisdiction from the same source—the Federal Government—then the same act constitutes but one offense, namely, an offense against the United States, and trial by either is a bar to trial by the other on the ground of former jeopardy.

339. Appellate jurisdiction.—When a court martial is lawfully constituted, has jurisdiction of the person and of the offense of an accused, and the sentence imposed is a legal one, civil courts are without power to review its proceedings. When the proceedings, findings, and sentence in such case have been approved by the proper naval authority, such approval is final and there is no other tribunal to which an appeal can be taken. But when a court martial is not legally constituted, is without jurisdiction, or adjudges an illegal sentence, its proceedings may be attacked in the proper Federal civil court either by means of a writ of habeas corpus, where there is unlawful restraint, or, in the case of illegal dismissal, by bringing suit for pay thereby withheld.

340. Jurisdiction of Army courts martial to try persons in the Navy, and vice versa.—There is no authority to try a man in the naval service before an Army court martial, as, for instance, for an offense committed in an Army transport, except where the jurisdiction is especially conferred by 10 U. S. Code 1473, and 34 U. S. Code 715 and 716, over marines and members of the Medical Department. Conversely, a Navy court martial can not try a person in the Army.

341. Jurisdiction can not be divested by act of accused.—A court martial having once duly assumed jurisdiction of a case can not, by any wrongful act of the accused, be ousted of its authority or discharged from its duty to proceed fully to try and determine according to law and its oath. Thus the fact that, after arraignment and during the trial, the accused has escaped from military custody

furnishes no ground for not proceeding to a finding, and, in the event of conviction, to a sentence, in the case; and the court may and should find and sentence as in any other case. During such absence it is proper for his counsel to continue to represent him in all respects as though present.

342. Preliminary investigation, arrest and suspension, and confinement before trial.—Article 197 (2) of the Navy Regulations requires the commanding officer of the accused to call upon the latter for such counterstatement or explanation as he may wish to make, and for a list of his witnesses, and provides that if the accused does not desire to submit a statement he shall set forth that fact in writing. It is to be noted in connection with the above that a commanding officer can not legally compel any subordinate under his command to make a statement relative to accusations against such subordinate. Thus, the right of silence or refusal to criminate one's self is accorded to the person whose conduct is the subject of preliminary investigation as well as to the witness or accused at a trial. The accused should always be warned before making a statement that anything he says therein may be used against him.

343. Same: Two arrests provided for.—The articles for the government of the Navy provide for two arrests—one, where necessary, in an emergency, and the other, an arrest for trial. When the accused is formally placed under arrest for trial he shall be furnished with a copy of the charges and specifications preferred against him. The confinement prior to trial should be no more rigorous than the circumstances require. An accused held awaiting trial is to be given every opportunity consistent with his safe detention to communicate with his counsel and to prepare his defense.

344. Report to be made by commanding officer of person recommended tried by general court martial.—When, after the careful inquiry required of the commanding officer by article 197 (1) of the regulations, the commanding officer decides that the circumstances require trial by general court martial, he shall submit to the Secretary of the Navy or such superior officer as may be authorized to convene the general court martial, the statements, etc., called for by articles 197 (1), 197 (2), and 200 (2), of the regulations, together with specimen charges and specifications covering the offenses for which he recommends trial, and in the case of an enlisted man a certified transcript of his service record, including therein date of birth and of enlistment, a statement of accounts, and a statement of the medical officer as to whether or not he is physically fit for retention in the service.

345. The precept.—The precept is the order convening the court. It is signed by the convening authority and addressed to the president of the court. It specifies the time and place of meeting and recites the composition of the court. Supplementary to the precept, individual orders are issued to the officers named therein directing them to perform the duties set forth in the precept.

It is incumbent upon an officer having official knowledge of his having been named in a precept convening a court martial to report to the president of said court for that duty even though he may not have received specific orders so directing.

If the convening authority desires to authorize the court to adjourn over holidays, the precept should specifically state that such authority has been granted. When less than thirteen members are detailed on a general court martial, the precept should specifically state that "no other officers can be detailed without injury to the service."

The precept must be drawn before the order for trial and the reference of the charges and specifications to the judge advocate, as otherwise the latter is issued to an officer nonexistent.

346. Personnel of court.—Except in cases where officers of the rank of lieutenant in the Navy and captain in the Marine Corps, or above, are not available, the circumstances of which shall be reported to the department by the convening authority, no officer shall be ordered as a member of a general court martial who is below the rank of lieutenant in the Navy or captain in the Marine Corps. In case an officer is to be tried, the 39th A. G. N. requires that, except where it can not be avoided without injury to the service, at least one-half of the members be senior to the accused. As a matter of policy in such a case all should be senior. The convening authority is justified in departing from this rule only under the most unusual circumstances. It is the policy of the Navy Department to require the president to be a line officer.

In detailing officers for the trial of a staff or marine officer it is proper, if the exigencies of the service permit, that at least one-third of the court be composed of officers of the same corps as and senior to the person to be tried.

No officer should be named as a member to whom either the judge advocate or the accused can reasonably object when called upon to exercise the privilege of challenge. An officer who is ordered to duty as a member of a court martial and who knows, or has due reason to believe, that he will be called as a material witness in a case to be tried before the court of which he is made a member, should immediately so advise the convening authority and upon receipt of such information such officer should be relieved from duty.

on said court. No officer is competent to serve as member of a summary court martial whose proceedings and sentence must later be reviewed and acted upon by him as convening authority or immediate superior in command.

347. Officers of the Naval Reserve, Coast Guard, etc., as members.—When actively serving under the Navy Department in time of war or during the existence of an emergency pursuant to law, as a part of the naval forces of the United States, commissioned officers of the Naval Reserve, Marine Corps Reserve, Coast Guard, Lighthouse Service, Coast and Geodetic Survey, and Public Health Service may be ordered to serve on naval courts martial and deck courts in the same manner and to the same extent as commissioned officers of the regular Navy or Marine Corps for the trial of officers or enlisted men of the regular Navy or Marine Corps or of any of the services above enumerated, subject to the following restrictions:

(a) When an officer of the regular Navy or Marine Corps is tried by court martial the majority of the members thereof will be of the regular Navy or Marine Corps.

(b) No officer of any of the services enumerated shall be tried by a court martial unless the majority of the members thereof are of the regular Navy or Marine Corps, or of the same service as the accused. (Whenever it is impracticable to bring an officer to trial without undue delay because of the restrictions in paragraphs (a) and (b), a full report of all the circumstances will be made to the Navy Department prior to trial indicating the officers available and requesting instructions.)

(c) The restriction under (b) above will also apply as far as possible to trials by court martial or deck court of enlisted men of the regular Navy or Marine Corps, or of any of the services enumerated, except that no restriction is placed on the service of commissioned officers of the Naval Reserve or Marine Corps Reserve.

(d) Commissioned officers of the Naval Militia in the service of the United States, the Lighthouse Service, the Coast and Geodetic Survey, and the Public Health Service shall not serve on courts martial or deck courts, except for the trial of members of their own services.

(e) Owing to the limited number of commissioned officers of the Coast Guard, they shall not be assigned as members of general courts martial except for trials of members of that service, if it can reasonably be avoided.

348. Changes in court.—Changes in the composition of the court can legally be made only by the convening authority, and no officer is empowered to sit as a member, judge advocate, or recorder, except

in obedience to an order signed by such authority and addressed to the court. It is undesirable to change the membership of a court during the progress of a trial.

349. Same: May be made by signal.—Changes in the composition of, or instructions to, courts martial may be made by signal, but the signal shall be followed by a written confirmation. Similarly such changes or instructions may be made by other form of despatch. When so made, if touching on the court's jurisdiction, the despatch shall be signed with the name of the convening authority and his proper title. Such despatches shall be followed by written confirmation signed by the convening authority.

350. Appointment of judge advocate or recorder.—The authority to convene a general court martial implies the power to appoint the judge advocate. The authority to appoint the recorder of a summary court martial is specifically given by the 27th A. G. N.; of a deck court by the 64th A. G. N., subsection (c). When, therefore, it is decided to assemble a general court martial, the convening authority shall select a competent commissioned officer who shall, if possible, not be liable to summons as a material witness in the case, to perform the duties of judge advocate, and shall name him as such in the precept. Similarly, in the case of a summary court martial, a commissioned or warrant officer shall be named; and in the case of a deck court a competent enlisted man. The judge advocate is in his military character responsible for the proper discharge of his duty to the convening authority.

351. Duties of judge advocate before trial.—When the judge advocate is notified that a case is to be tried before the court of which he is such, he should be furnished with such papers and instructions as are considered necessary for his guidance. The record of proceedings of a court of inquiry in the case, if any has been held, must be transmitted to him and he shall examine it to the end that he may, if practicable, summon all the necessary witnesses. He should question such persons as the papers in his possession indicate have any knowledge of the facts with a view to obtaining all necessary evidence to sustain the charges and specifications.

It is the duty of the judge advocate to ascertain that the accused has received a true copy of the charges and specifications preferred against him and when it was received. He shall critically examine the charges and specifications in order that, prior to arraignment, he may advise the convening authority of any technical inaccuracies that he may discover.

Before the court assembles the judge advocate should also see that a suitable place is provided for the sessions of the court, and

that it is supplied with writing materials for the use of the members. He should summon the necessary witnesses for the prosecution and obtain from the accused a list of his necessary witnesses and summon them. He should make a preliminary examination of the witnesses for the prosecution, and, as far as possible, systematize his plans for conducting the case. Prior to the trial he shall, for the convenience of the court, place upon the table several copies of the charges and specifications on which the accused is to be tried. The judge advocate should confer with the accused as soon as practicable after the latter has received a copy of the charges and specifications. He should scrupulously avoid even the slightest suggestion to the accused that he plead guilty to anything charged against him. He should inform the accused that he is entitled to counsel; that he may have a reasonable time in which to prepare his defense; and of his rights in regard to having witnesses summoned for the defense. The judge advocate should inform the accused as to the probable witnesses to be called for the prosecution, although it is unnecessary to inform him as to the testimony expected from them. In many cases the accused will not know whether he wants or needs counsel. In that event the judge advocate must explain to him the general duties of counsel for the defense. If, in discussing the case with the accused, it develops that he might have any good defense whatever, or the accused believes he has, discussion of the merits of the case should be terminated at once and the accused advised to plead not guilty and secure counsel. The judge advocate should endeavor to ascertain what statement, if any, the accused contemplates making at the trial, as this will enable the judge advocate to determine whether the accused has or believes he has any defense to offer. Whenever an accused has secured counsel, all negotiations by the judge advocate must be conducted through counsel.

Whenever an accused, whose trial by general court martial has been ordered for a purely military offense, as distinguished from one involving moral turpitude, states that he was under eighteen years of age at the time of the commission of his offense, the judge advocate will advise him, in writing, that if he desires his age to be considered in the review of his case, to obtain documentary evidence of the correct date of his birth in one of the following forms, if practicable, and forward it to the Chief of the Bureau of Navigation (or the Major General Commandant, U. S. Marine Corps), via his commanding officer:

(a) A birth certificate from the registration office at the place of his birth (under seal).

(b) A certificate of baptism from the church records (under seal).

(c) Two affidavits made by persons other than relatives, who of their own knowledge can swear to the correct date of birth.

In forwarding the record of proceedings to the convening authority, the judge advocate will in such cases attach thereto a copy of his communication to the accused with a notation thereon as to whether or not the accused intends to take steps to obtain proper evidence of the date of his birth.

352. Same: Where loss to Government may be involved.—In those cases where from the nature of any offense charged, or from other information furnished the judge advocate, it appears that a loss to the Government may have resulted, the judge advocate shall forward with the record of proceedings a report as to whether or not the Government suffered any loss, and if so, the amount thereof. If he is unable to ascertain the loss, he shall so state, and the convening authority shall then conduct such investigation as is necessary to determine the loss to the Government to the end that the disbursing officer carrying the prisoner's accounts may be advised thereof.

353. Same: He shall not try case out of court.—The judge advocate shall not usurp the functions of the court by weighing evidence outside of court and advising the court to accept a plea of guilty in a less degree than charged; or by weighing the evidence in the case as shown by the original papers and withholding evidence which should be submitted to the court for its consideration. So far as applicable a deck court officer shall also be guided by the foregoing provisions, and should carefully safeguard the right of the accused to be confronted by and to cross-examine the witnesses against him.

354. Same: To report delays in trials.—The judge advocate shall report to the convening authority all cases, with the reasons for the delay, in which the accused is not brought to trial within ten days after the charges have been received by the judge advocate. This shall never be construed, however, as authority unnecessarily to delay commencing the trial.

355. Counsel for judge advocate.—In order that a counsel for the judge advocate may have standing before a court, it is necessary that he be detailed or authorized by the convening authority. If so detailed the court shall give him equal facilities with the counsel for the accused in the performance of his duties.

356. Accused entitled to counsel.—The accused is entitled to counsel as a right, and whenever practicable to counsel of his choice. The court can not properly deny him the assistance of a professional or other adviser. Enlisted men to be tried shall be advised particularly of their rights, and should be represented by counsel, if practicable.

unless they explicitly state in open court that they do not desire such assistance. Should the accused state that he does not desire counsel he shall be informed by the court that counsel will be assigned him should he so desire, and he shall be advised to consult counsel before deciding to proceed with the case without counsel. A statement that this section has been complied with shall be entered upon the record of proceedings. It should be borne in mind, however, that the convening authority has no power to force counsel upon an accused unless the accused is mentally incompetent and thereby unable to look after his own interests. In such a case, when mental incompetency becomes known, the case becomes one for a doctor rather than a court. Failure to comply with request of accused that counsel be provided him is a fatal error.

357. Officer detailed as counsel.—When the accused before a court martial has no legal adviser, the commandant of the navy yard or station, the convening authority, or the senior officer present within whose jurisdiction the court sits shall, if the accused so requests, detail a suitable officer to act as his counsel. This officer shall, if practicable, have the qualifications required for membership on a general court martial. If there be no such officer available in the case of a general court martial, the fact shall be reported to the convening authority for action. An officer so detailed shall perform such duties as usually devolve upon the counsel for the defense before civil courts in criminal cases. As such counsel he shall use all legal means to protect the interests of the accused and to present to the court such defense as the accused may have, and to offer such evidence in extenuation, mitigation, etc., as he may be able to obtain. Ordinarily, when so requested by the accused, counsel should be detailed a sufficient time in advance of trial to enable him properly to prepare the accused's case. He should, so far as practicable, be relieved of all other duties which interfere with this. If accused does not request counsel until he enters court, the court is powerless to appoint one, but should adjourn from day to day until the appointment is made by one of the officers named above. It is never proper in such case to detail the judge advocate as counsel.

358. In case request of accused for certain person to act as counsel is refused.—Sometimes the request of the accused to have a certain person act as counsel is refused for cause and someone else is appointed. Under such circumstances the record should show the grounds for refusing the original request of the accused. Wherever practicable the accused should be allowed such person as he requests for counsel.

359. Accused to be informed of his rights.—The counsel for the accused or, in case there is no counsel, the judge advocate, should before trial carefully explain to the accused that he may, besides introducing witnesses in his behalf, either (1) take the stand and testify under oath, or (2) make a statement not under oath; that should he take the stand, he may be subjected to a rigorous cross-examination as set forth in chapter III; and that should he not under oath make a statement which contains averments of material facts, such averments can not be considered as evidence or accorded evidentiary weight by the court. In advising the accused as to his right to take the stand, the judge advocate should carefully refrain from influencing the accused in this respect except as set out by section 401.

Where the accused has made a statement to the court not under oath, the judge advocate (if there be no counsel) will, upon the completion of such statement, inform the court that the provisions of this section have been complied with.

360. Legal ethics.—The following excerpts from the Canons of Ethics of the American Bar Association, adopted in 1908, as amended to 1933, are set forth herein for information and guidance:

3. Attempts to exert personal influence on the court.—A lawyer should not communicate or argue privately with the judge as to the merits of a pending cause.

5. The defense or prosecution of those accused of crime.—It is the right of the lawyer to undertake the defense of a person accused of crime, regardless of his personal opinion as to the guilt of the accused; otherwise innocent persons, victims only of suspicious circumstances, might be denied proper defense. Having undertaken such defense, the lawyer is bound by all fair and honorable means, to present every defense that the law of the land permits, to the end that no person may be deprived of life or liberty, but by due process of law.

The primary duty of a lawyer engaged in public prosecution is not to convict but to see that justice is done. The suppression of facts or the secreting of witnesses capable of establishing the innocence of the accused is highly reprehensible.

6. Adverse influences and conflicting interests.—It is the duty of a lawyer at the time of retainer to disclose to the client * * * any interest in or connection with the controversy, which might influence the client in the selection of counsel * * *.

The obligation to represent the client with undivided fidelity and not to divulge his secrets or confidences forbids * * * subsequent * * * employment from others in matters adversely affecting * * * the client * * *.

8. Advising upon the merits of a client's cause.—A lawyer should endeavor to obtain full knowledge of his client's cause before advising thereon * * *. The miscarriages to which justice is subject, by reason of surprises and disappointments in evidence and witnesses, * * * admonish lawyers to beware of bold and confident assurances to clients * * *.

9. *Negotiations with opposite party.*—A lawyer should not in any way communicate upon the subject of controversy with a party represented by counsel * * * but should deal only with his counsel.

15. *How far a lawyer may go in supporting a client's cause.*—It is improper for a lawyer to assert in argument his personal belief in his client's innocence or in the justice of his cause.

The lawyer owes * * * the client warm zeal in the maintenance and defense of his rights, and the exertion of his utmost learning and ability. * * * No fear of judicial disfavor or public unpopularity should restrain him from the full discharge of his duty. In the judicial forum the client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land, and he may expect his lawyer to assert every such remedy or defense. But * * * the office of attorney does not permit * * * violation of law or any manner of fraud or chicane.

16. *Restraining clients from improprieties.*—A lawyer should use his best efforts to restrain and to prevent his clients from doing those things which the lawyer himself ought not to do, particularly with reference to their conduct towards courts, judicial officers, witnesses, and suitors.

17. *Ill feeling and personalities between advocates.*—Clients, not lawyers, are the litigants. * * *. All personalities between counsel should be scrupulously avoided * * *. It is indecent to allude to the personal history or the personal peculiarities and idiosyncrasies of counsel on the other side. Personal colloquies between counsel which cause delay and promote unseemly wrangling should also be carefully avoided.

18. *Treatment of witnesses and litigants.*—A lawyer should always treat adverse witnesses and suitors with fairness and due consideration * * *.

22. *Candor and fairness.*—It is not candid or fair for the lawyer knowingly to misquote the contents of a paper, the testimony of a witness, the language, or argument of opposing counsel, or the language of a decision or a textbook; or with knowledge of its invalidity, to cite as authority a decision that has been overruled, or a statute that has been repealed; or in argument to assert as a fact that which has not been proved, or in those jurisdictions where a side has the opening and closing arguments to mislead his opponent by concealing or withholding positions in his opening argument upon which his side then intends to rely * * *.

A lawyer should not offer evidence, which he knows the Court should reject * * *. Neither should he introduce into an argument, addressed to the court, remarks or statements intended to influence the jury or bystanders.

37. *Confidences of a client.*—The duty to preserve his client's confidences outlasts the lawyer's employment * * *.

44. *Withdrawal from employment as attorney or counsel.*—The right of an attorney or counsel to withdraw from employment, once assumed, arises only from good cause. Even the desire or consent of the client is not always sufficient.

361. *Clerical assistance and interpreter.*—In all trials by court martial, where practicable and necessary, the convening authority shall provide for the furnishing of clerical assistance. In cases where there is no competent stenographer assigned, the court may require that all communications, motions, and questions be reduced to writing and read to the court.

Wherever practicable the convening authority, if not present at the place where the court is to meet, shall direct some officer present there to detail clerical assistance from either the enlisted or civilian personnel under his jurisdiction.

If a reporter or interpreter be employed, he should be sworn. He should be present when the court is open but should not be allowed to be present during closed court.

362. Same: Expense to the Government must be authorized.—No expense to the Government by the employment of a reporter, interpreter, or other person to assist in a trial by court martial should be allowed by the court except when authorized by the convening authority.

When necessary, the convening authority may authorize the judge advocate of a court martial or court of inquiry to employ an interpreter or clerical assistance at market rates or less for stenographic reporting. However, the convening authority, before authorizing the employment at Government expense of an interpreter or reporter, should exhaust all local governmental sources, including civilian employes, and, if this proves unavailing, he should communicate with the Navy Department, requesting advance authority to employ the required assistance. When such employment is authorized an agreement is drawn up in duplicate between the judge advocate and the stenographer. One copy of this agreement is retained by the stenographer and the other is forwarded by the judge advocate, together with the bills of the stenographer in duplicate, certified correct, and a certified copy of the letter of the convening authority, to the disbursing officer of the navy yard or naval district in which the trial is held. Such disbursing officer will prepare the necessary public bills and pay the account upon receiving the proper signatures.

A report of all expenditures, made in accordance with the above instructions, shall be made by the judge advocate to the Judge Advocate General.

363. Provost marshal, guard, and orderly.—An officer of the Navy not above the grade of lieutenant, or an officer of the Marine Corps not above the grade of captain, shall, upon proper application by the judge advocate of a general court martial, be detailed by the commandant or the senior officer present to serve as provost marshal of the court. In case of the trial of a petty officer or a person of inferior rating of the Navy, or a noncommissioned officer, musician, or private of marines, the provost marshal may be either a petty officer of the Navy or a noncommissioned officer of marines.

At the request of the judge advocate, the necessary guard and orderlies are detailed by the commanding officer of the ship or com-

mandant of the yard or station on board of or at which the court is ordered to convene.

364. Copy of charges and specifications forwarded to the accused.—The copy is sent to the accused by the convening authority through the judge advocate. In the case of a deck court a copy of the specification is not required for the accused, his signature on the deck court card, consenting to trial by deck court, affirmatively showing that he has seen the specification.

365. Original charges and specifications prefixed to record.—The original charges and specifications shall be prefixed to the record in each case.

366. Place of meeting of court.—Courts martial are assembled and held in a convenient part of a ship or navy yard or other place as may be ordered. But no naval court or assembly of a judicial character shall be ordered or permitted to assemble or conduct any part of its proceedings in any place subject to foreign jurisdiction, except by consent of the foreign country. When, however, United States forces are in foreign territory for military purposes, that part of the foreign territory actually occupied by such forces is not subject to foreign jurisdiction within the meaning of this section.

A court martial assembles at its first session in accordance with its precept; thereafter, according to adjournment or recess.

It is discretionary with the court whether it will view the place where the alleged crime was committed, or where some fact or transaction material thereto occurred. If it does so, the court must be attended by the accused and his counsel. The object of a view is to enable the court to understand the evidence better. No evidence should be taken while viewing the place and the court should hold no communication with others while so doing, except as necessary to have witnesses point out objects about which they have testified, or to have the judge advocate or recorder or counsel point out objects about which they will produce testimony.

367. Hours of sessions.—A naval court martial may hold sessions at any hour of the day, but courts martial are not to meet at unusual hours, nor should the duration of the sittings be unusually protracted, unless the court is informed by the convening authority that the case is one of extraordinary urgency and that such a measure is therefore warranted.

368. Sessions to be public.—The sessions of courts martial shall be public, and, in general, all persons, except such as may be required to give evidence, shall be admitted. The accused himself may expressly waive his right to a public trial. In cases where it may seem desirable that certain classes of spectators, such as women, children,

and others should be excluded during the trial, the court, when convened by the Secretary of the Navy, or the convening authority in other cases, should communicate with the Secretary of the Navy requesting permission therefor and giving a full statement of the reasons. It is proper at any time for the court to advise spectators of such classes as the above to withdraw on account of the nature of the testimony anticipated.

369. Members take seat in order of rank.—The members are named in the precept in order of their rank and take seat accordingly, the president at the head or center of the table and other members at his right and left alternately.

If the names should inadvertently not appear in the precept in order of rank, the members shall nevertheless take seats, vote, and sign in the order of their actual rank.

370. General duties of members.—In general, the members of the court as a body finally decide upon all questions as to the admissibility of evidence, and pass upon all questions presented to the court during the course of the proceedings. Also, the members of a court, as well as the judge advocate, are responsible for the correctness of its record of proceedings.

371. Same: Voting.—The vote of each member upon a question arising during the progress of a trial—as, for instance, the competency of members or witnesses—has equal weight, and, in taking the opinion of the court, the junior member shall vote first, *viva voce*, and then the others in inverse order of their seniority. In the event of a tie vote upon a motion or objection, the same is not sustained. Where evidence is taken upon such questions the issue is determined by a preponderance of the evidence—that is, by the evidence which best accords with reason and probability—and the party having the affirmative need not prove beyond a reasonable doubt. Where there is a majority, the view of the majority becomes the decision of the court.

372. Same: Duty to decide according to the law, even if at variance with their individual beliefs.—Courts martial can not with propriety attempt to rise above the law of which they are the creatures, and disregard the provisions of law. They can not announce by their findings that offenses with which Congress has seen fit to deal as crimes of a very grave nature are, in their opinion, too trivial and insignificant to be seriously regarded. If the members of the court believe that because of good motive on the part of the accused when he committed the offense, or because of unusual circumstances, the accused should not be severely punished, it is none the less their duty to find according to the law and the evidence and to adjudge

a sentence commensurate with the offense proved. In such a case, ample provision for the protection of the accused is provided in the recommendation to clemency which it becomes the duty of the members of the court to make, and the court should not presume upon the prerogative of the reviewing authority in exercising clemency. Such action would be, in effect, a reflection upon the judgment of the reviewing authority.

373. Deliberations to be in closed court.—Deliberations upon any question arising between the parties to the trial, and upon challenges, the sufficiency of the charges and specifications, the findings, etc., shall be conducted in closed court, except that it is not necessary for the court to go into closed session where it is manifest that the action of the court will be unanimous, as upon a challenge where the challenged member admits that he can not be impartial, or for findings upon a plea of guilty; and in any other cases where, in the discretion of the president, closing the court would be merely perfunctory. Care will be taken in such cases that no votes are taken in open session. If any member believes that the matter should be passed upon in closed session, it is proper for him to move that the court be closed, whereupon the president will clear the court. When the doors are opened the accused will be informed of the action the court has taken upon any challenge, question of evidence, etc., and upon an acquittal.

Whenever the court is closed, the judge advocate shall withdraw and the expression "the court was cleared" shall be understood as including such withdrawal.

If for any reason it is desired to call the judge advocate before the court while it is closed to advise it, the accused should also be present.

In important cases where delay would ensue because of the number of spectators present the court itself may withdraw to another room prepared for the purpose for deliberating in closed session.

374. Liability of members.—A court martial has no power to punish its members, but a member is liable for improper conduct as for any other offense against naval discipline.

The members of a duly constituted and organized court martial can not be interfered with in their proceedings by naval authority, yet they may be responsible in civil courts for any abuse of power or illegal proceedings.

375. Absence of members.—The 46th A. G. N. forbids a member of a general court martial, after the proceedings are begun, absenting himself therefrom, except in case of sickness or order from a

superior. A member of a summary court martial absenting himself, except under similar circumstances, commits a grave military offense. Except in the case of sickness, absence from duty by a member of a court martial is not warranted unless with the knowledge and approval of the convening authority, or except in an emergency to be judged by his commanding officer or immediate superior, and when the provisions of the next section are complied with. A mere approved request for leave is not sufficient; nor is the fact that such member be the commanding officer of a vessel about to sail.

Unauthorized absence of a member of a general court martial will not prevent the court proceeding with the trial if a legal quorum remain.

In any case where a member is absent the reason therefor, if known, shall be set forth in the record.

376. Same: By order from superior.—In case of absence by reason of an order from a superior officer, the provisions of article 89 (2) of the Navy Regulations shall be complied with. The report of the circumstances will be forwarded by the member receiving such order to the convening authority through the president of the court, and a copy of such report will be attached to the record of each case to which it applies.

377. Same: By reason of illness.—In case a member is ill, he shall, if able, request the attending medical officer to report the fact of his sickness to the convening authority, and such request will be complied with. The report will be forwarded through the president of the court, and a copy thereof will be attached to the record of each case to which it applies.

378. Same: Procedure in case of.—In case of the compulsory temporary absence of a member of a general court-martial, the court may excuse the member so absent from further attendance upon the case then pending, provided there remain the legal number of members present; but should that not be deemed possible or advisable, and should such member resume his seat, the record of proceedings during his absence shall be read to him and the requirements of article 47, A. G. N., shall be strictly complied with. If the absence of a member reduces the court below the legal minimum, an adjournment should be taken until the next day or over Sunday, as the case may be, unless it appear that the absence of the member may be protracted, in which case the president should inform the convening authority of the facts.

379. Procedure in case of absence of judge advocate.—The temporary absence of the judge advocate at any time during the progress of the trial does not invalidate the proceedings; but, as the court has

no authority to detail any person to act as judge advocate, it must in case of his incapacity, adjourn from day to day until he is able to resume his duty or a successor is appointed by the convening authority.

380. Procedure on seating of new member.—In the case of a new member of the court being appointed after the trial has begun, he shall take his seat as such, subject to challenge in the same manner as other members, the reading of the record of proceedings of the trial to date, and the requirements of article 47, A. G. N. The record shall affirmatively show the presence of such new member.

381. General duties of president or senior member.—The senior officer in rank of a naval general court martial becomes president thereof by virtue of his rank. The senior member of a summary court martial is merely denominated "senior member." Besides his duties and privileges as a member, the president or senior member, is the organ of the court. He is responsible for the dignified and orderly conduct of the proceedings of the court and is empowered to keep order. He shall recognize the equality of members in deciding questions presented to the court in the course of its proceedings, and in all cases where such questions arise he shall order the court cleared for the purpose of reaching a decision thereon, except where in his opinion this would be merely perfunctory. The president speaks and acts for the court and in every case announces the ruling of the court. He is also responsible that all persons called before the court are treated in a becoming manner, and in all cases of impropriety, whether in language or behavior, shall, if necessary, report the offender to the convening authority.

The senior member of a summary court martial reports the fact and time when the court martial meets and when it adjourns through routine channels to the convening authority, and transmits the finished record to him.

The deck court officer is responsible for the transmission of the finished record of the deck court to the convening authority.

382. Same: Administers oaths.—The president, senior member, or deck court officer administers the oath to the judge advocate or recorder, and to the witnesses.

383. Guard, orderly, and provost marshal.—The duties of the guard and orderly in a court-martial trial are those normally associated with these terms as used in the naval service. A provost marshal is not generally used in the ordinary trial, but his employment, as a rule, is confined to cases of importance. The provost marshal is the police officer of the court and assists the president of the court in the maintenance of order during the progress of the trial. He

shall perform such other duties as may be assigned him by the court.

384. Counsel for accused.—Immediately after the accused is brought before the court he should be asked if he desires counsel, and if he does, counsel should take seat as such. If the counsel for the accused is absent at any stage of the proceedings, the record should show affirmatively that the accused waived the privilege of having counsel present at that time. Otherwise the court should adjourn for a reasonable time, if it appear that the counsel will then be present, or until the convening authority appoint another counsel.

Permission to address the court should be granted by the court to counsel for the accused, and the latter should be allowed to use all legal means to protect the interests of the accused, but shall not be permitted to interfere in any manner with the court's proceedings.

Counsel for the accused shall, when he so requests, be allowed to examine the record of proceedings, exclusive of the findings and sentence, as it is prepared.

385. Counsel for judge advocate.—If counsel be detailed or authorized by the convening authority to assist the judge advocate, the court shall give him equal facilities with the counsel for the accused in the performance of his duties. Such counsel should be present when the court first meets, or, if detailed after the trial has begun, he should report as soon as possible thereafter.

386. Precept read.—At the first session of the first trial by a newly convened court the precept, together with any orders from the convening authority directing a change in the composition of the court set forth therein, will be read aloud by the judge advocate in court in the presence of the accused, the judge advocate and the accused standing during the reading. Thereafter, at subsequent trials, the precept and those orders from the convening authority previously read will be submitted to the accused for his information and inspection. Orders from the convening authority directing a change in the membership of the court received after the reading of the precept and modifying orders will be read in the manner prescribed above and at the sessions of succeeding trials will be submitted to the accused along with the precept and similar orders which have been read.

A copy of the precept of a general court martial and changes, if any, shall be prefixed to the record of proceedings in each case.

In the case of a summary court martial the original precept, together with changes therein, shall be prefixed to the record of the first trial by the court, or the first trial following receipt of such change, and in the following cases reference shall be made thereto, and copies shall be prefixed.

The original precept of a general court martial, together with any

orders directing changes in the composition of the court set forth therein, shall be kept until the court is dissolved, or, in the case of a permanent navy yard court, until a new precept is issued, and then returned to the convening authority. If the convening authority be other than the Secretary of the Navy, he shall then forward them to the office of the Judge Advocate General.

387. Challenge: Right of.—The accused and the judge advocate have equal rights of challenge. A member has no such right, but it is his duty to lay any facts of which he may have knowledge, tending to show that another member is disqualified, before the court for its action. It is the duty of the judge advocate to challenge in turn any members to whom the prosecution objects, and after these challenges are determined to ask the accused if he objects to any member of the court appointed to try him, and a minute of this inquiry and the answer thereto are invariably to be entered on the record. As a general rule, whatever objection either party may make to any member shall be decided upon before the court is sworn, but at any stage of the proceedings prior to the findings challenges may be made, either by the judge advocate or by the accused, for cause not previously known.

No right of challenge exists against anyone other than a member of the court.

388. Same: What constitutes valid.—A positive declaration by a challenged member that he is not prejudiced against the accused nor interested in the case is ordinarily satisfactory to the accused, and, in the absence of material evidence in support of the objection, will justify the court in overruling it. However, a challenge upon any one of the following grounds, if admitted by the challenged member or proved as provided for in section 390, shall be sustained despite any declaration the challenged member may make:

(a) That he sat as a member of a court of inquiry or board which investigated the charges.

(b) That he has personally investigated the charges and expressed an opinion thereon, or that he has formed a positive and definite opinion as to the guilt or innocence of the accused.

(c) That he is the accuser. (This does not include an officer who merely refers for trial charges preferred by another, unless he has formed a definite opinion.)

(d) That he will be a material witness for the prosecution or for the defense—except only as to the previous good character of the accused.

(e) That he sat as a member of a court or board which tried or investigated another person upon charges based on the same transaction concerning which the accused is on trial.

(f) That he is related by blood or marriage to the accused.

(g) That he has a declared enmity against the accused.

389. Same: When a member testifies as a witness.—When a member is called and has testified as a witness for the prosecution or for the court, on any matter material to the issue or prejudicial to the ac-

cused, he shall thereupon be considered as challenged by the accused, unless the accused expressly request that he be not so considered—which should appear affirmatively on the record—and he shall be forthwith excused by the court from further attendance as a member thereof.

390. Same: Court decides on.—A challenge on any of the grounds set forth in the preceding sections, if properly supported by the facts, shall be sustained by the court. Where, however, the basis for challenge is other than one of such grounds, it is for the court to determine the question of the member's alleged disqualification. This is done by a majority vote based upon the preponderance of the evidence, but in case of a tie the challenge is not sustained. Courts should be liberal in passing upon challenges, but they will not entertain an objection that is not specific or upon the mere assertion of the accused, or judge advocate, if it is not admitted by the challenged member or proved.

In a case of challenge, the decision of the court is final, and the party who challenges can not insist upon his challenge in opposition to the decision of the court. Members of courts are liable to challenge at the beginning of each distinct trial.

391. Same: Procedure upon.—In case the challenged member makes no response or makes a response unsatisfactory to the challenger, the latter may offer testimony in support of his challenge or may subject the challenged member to an examination under oath as to his competency as a member. An examination on a challenge may be under oath on *voir dire* administered by the president. Witnesses may be introduced in rebuttal and arguments may be made. It is customary for a member objected to to withdraw when the court is cleared to deliberate on the challenge, and he should always do so. Although this may leave but four members in the court, it still leaves a legal quorum as the member who has withdrawn has not yet ceased to be a member. The court, after being cleared, proceeds to deliberate and decide upon the validity of the objection. A majority vote of the members voting determines. In case of a tie the challenge is not sustained. The court is then opened and the decision announced. The objection, the cause assigned, the statement, if any, of the challenged member, the testimony of witnesses examined on *voir dire*, and the decision of the court shall be regularly and specifically entered on the record. When a challenge is sustained the challenged member ceases, from the announcement of the result in open court, to be a member for that trial.

In case more than one member is to be challenged the junior one shall be challenged first.

392. When a member not challenged considers himself disqualified.—The court of itself can not excuse a member in the absence of a challenge. An unchallenged member who thinks himself disqualified can be relieved only by application to the convening authority. He should announce in open court that he thinks himself disqualified so as to afford the proper party opportunity to challenge.

393. When court is reduced by challenge below legal quorum.—If, by challenges sustained, a court is reduced below the legal quorum, the convening authority should be notified as soon as practicable and the court adjourned awaiting the appointment of new members by the convening authority. A copy of the communication notifying that authority of the adjournment and the reasons therefor must be prefixed to the record.

394. Before court is sworn it can do nothing other than determine challenges.—Until a court is duly sworn (organized) according to law, it is incompetent to perform any judicial act except to hear and determine challenges against its members.

395. When organization is accomplished.—The court having met, the accused being present and his counsel, if any, having been introduced, the precept read, the right of challenge accorded, and the court and judge advocate sworn, the organization of the court is complete for the trial of the case.

396. Accused must admit receipt of copy of charges and specifications.—Immediately after the court is sworn the accused shall be asked whether he has received a copy of the charges and specifications preferred against him, and on what date.

If the accused denies having received a copy of the charges and specifications, the fact that he has received them, or that he refused to take them when duly offered to him, must be established by evidence in an interlocutory proceeding before proceeding with the trial proper.

397. Nolle prosequi.—The judge advocate should announce any nolle prosequi received by him prior to trial before the accused is asked whether he objects to the charges and specifications.

398. Charges and specifications: Must be pronounced in due form and technically correct.—After the court has been organized and the fact that the accused has received a copy of the charges and specifications has been admitted or shown, the accused is asked if he has any objection to make to them. It is proper to object if the accused does not think the specification states an offense, because it is not definite enough, or because there is some error, such as misnomer, but the accused must state in what particular he deems the charges or specifications defective. If the accused does not object to any

feature of the charges and specifications, the judge advocate reports no defect in them, and the members of the court find no defect, the court pronounces them in due form and technically correct. An entry to this effect must be made upon the record. After this stage of the proceedings, the accused will not be heard to object to the charges and specifications except upon an error of substance, that is, upon a defect which would vitiate the entire proceedings. This may be noted at any stage of the trial that it manifests itself.

399. Postponement.—Either the judge advocate or the accused may request a postponement of the trial stating his reasons for the request. But an application to suspend the proceedings of a court for a longer period than from day to day, Sundays excepted, must be referred to the officer convening the court, who alone has authority to grant such request.

The court should be liberal in granting a postponement requested by the accused.

A court having granted a postponement in one case is not precluded from taking up another case during such postponement.

400. Duties of judge advocate during trial.—During the trial the judge advocate conducts the case for the Government. He executes all orders of the court; reads the convening order; administers the oath to the members, reporter, and interpreter; arraigns the accused; examines witnesses; and is responsible for the keeping of a complete and accurate record of the proceedings.

While the court is in open session, it is the duty of the judge advocate to advise the court in all matters of form and of law. On every occasion when the court demands his opinion he is bound to give it freely and fully; and, even when it is not requested, to caution the court against any deviation from essential form in its proceedings, or against any act or ruling in violation of law or material justice.

He shall at all times exercise great care in regard to the authenticity of any statements he may make to the court.

The accused and his counsel have a right to the opinion of the judge advocate, in or out of court, upon any question of law arising out of the proceedings. The judge advocate shall acquaint himself with the rules of evidence, and apply them in determining the admissibility of evidence. He shall offer only such evidence as is properly admissible. When in doubt, he shall offer the evidence. The judge advocate is particularly to object to the admission of improper evidence, and he shall point out to the court the irrelevancy of any evidence that may be adduced which does not bear upon the matter under investigation. Should the advice of the judge advocate be

disregarded by the court, he shall be allowed to enter his opinion upon the record. Under such circumstances it is also proper for the court to record the reasons for its decision. The minutes of opinion and decision are made for the information of the reviewing authority, who should have the error, on whichever side it may be found, brought fairly under his consideration, but neither the judge advocate, the accused, nor any member of the court has any right to enter an exception or protest on the record.

401. Same: To protect interests of accused who does not have counsel.—In the event that the accused has no counsel, the judge advocate shall protect his interests, having in mind, however, at all times his duties as prosecutor. Under such circumstances he shall not fail to advise the accused against advancing anything which may tend either to criminate him or prejudice his cause; he shall see that no illegal evidence is brought against the accused, and shall assist him in presenting to the court in proper form the facts upon which his defense is based, including such evidence as there may be in extenuation or in mitigation as well as evidence of previous good conduct and character.

If, during the progress of the trial of an accused without counsel, evidence is adduced that develops that he might have a good defense which could be better presented by counsel, the judge advocate should strongly advise the accused to get counsel, and the court should do the same. The judge advocate should scrupulously avoid questioning an accused in an improper manner in court, as by asking him if he will admit he is the accused, as this savors of making him give evidence against himself.

402. Same: Not to be present during closed court.—When the court is to be cleared, the president so announces, and all persons, including the accused, his counsel, and the judge advocate, withdraw. But the judge advocate is called before the closed court to record the findings and again to record the sentence.

403. Trials in joinder.—When two or more persons are tried in joinder, they shall be separately arraigned; the questions constituting each arraignment and the answers thereto shall be separately recorded; and throughout the trial the accused persons shall severally be given the same opportunity to answer, plead, make objections, examine, be examined, submit a written defense or statement, etc., and these steps shall be entered upon the record with the same particularity as in the ordinary case of the trial of one person only.

404. Pleas, kinds of.—The pleas recognized by naval courts-martial in the order in which they should be made are: (a) Pleas to the

jurisdiction; (b) pleas in bar of trial; and (c) pleas to the general issue. No other pleas than the foregoing will be heard by a court martial, and if offered the party offering will be advised that he must make them as an objection to the charges and specifications, and an opportunity will be afforded him to do so.

405. Plea to the jurisdiction.—This plea should regularly be made prior to pleading the general issue, but as lack of jurisdiction is a fatal defect, the plea may be made at any time. An objection on the ground of lack of jurisdiction involves a question as to the legal authority of the court, such as:

(a) That it was convened by an officer having no legal authority to convene it.

(b) That it is not legally constituted.

(c) That the accused is not subject to the court's jurisdiction.

(d) That the offense is not one cognizable by naval court martial.

Even though the accused fail to make objection to the jurisdiction of a court, if the court did for any reason lack jurisdiction, the defect is fatal and the findings and sentence of the court must be set aside. Waiver of objection will never avail to confer jurisdiction upon a court not legally possessing it.

406. Pleas in bar of trial.—A plea in bar of trial, if sustained, is a substantial and conclusive answer to the charge or specification to which it is addressed. Such a plea may be made on the grounds set forth in the three following sections:

407. Same: The statute of limitations.—The statute of limitations, as affecting persons subject to trial by naval courts martial, is contained in articles 61 and 62, A. G. N.

The above articles do not operate to extinguish the offenses in cases where they apply, but merely give the accused in such cases a defense against trial therefor. It consequently follows that the burden falls upon the accused in every case in which he desires to avail himself of these articles, in addition to establishing that he comes within the provisions of them, affirmatively to establish that he is not within their exceptions. Since these statutes of limitation are matters of defense only, they may be waived by the accused.

A plea of guilty operates as such a waiver. But it is not imperative that the accused, in order to avail himself of this defense, do so by means of a special plea; the limitation may equally be taken advantage of under a plea of not guilty by establishing this defense by evidence during the trial.

The fact that an accused offers as a defense the statute of limitations in no way challenges the jurisdiction of a court martial to hear and determine the matter, but goes to the merits of the case

and is a matter to be determined by the court in the exercise of its jurisdiction. The court-martial has final determination of the question, and its decision thereon is not reviewable in habeas corpus proceedings in the civil courts.

408. Same: Former jeopardy.—The fifth amendment to the Constitution of the United States provides that no person shall “be subject for the same offense to be twice put in jeopardy of life or limb.” This provision is the authority for the principle that no person shall be tried a second time for the same offense. In order, however, that a person on trial before a court martial may be given the benefit of this principle, it is necessary that he should have been actually *acquitted or convicted on a former trial*. After the proceedings in a former trial have been carried to an acquittal or conviction, the jeopardy is complete and it matters not whether any action, or, if any, what action has been taken upon the proceedings by the reviewing authority. But proceedings upon a “fatally defective” specification do not constitute former jeopardy.

Likewise, to constitute former jeopardy, the court before which the former proceedings have been conducted must have been a duly constituted and legally competent court. A commanding officer is not a court martial and punishment inflicted by him is not a bar to trial.

Also, the term “same offense” does not mean the same act. The same act may be an offense against more than one Government, as, for example, when one enlisted man assaults another within the territory of one of the States, it is an offense both against that State and against the United States. Moreover, the same act may be an offense against civil law and at the same time a separate and distinct offense against naval law.

When a person has been once acquitted or convicted by a court of a certain offense, he is not subject to trial subsequently for a minor offense included therein. Likewise, when once tried for a minor offense, an accused can not later be tried for a major offense of which it is a part, because to so do would be to place him twice in jeopardy for the minor offense.

In order that an accused may avail himself of the defense of former jeopardy, he must take advantage of it and plead it in bar of trial at the proper time. If he waives it, as by pleading to the general issue, the court will proceed with the case. When he wishes to avail himself of it, the production of the record of the former trial is the proper way to sustain such objection.

409. Same: Pardon.—A pardon is an act of the President that exempts the individual on whom it is bestowed from the punishment

the law inflicts for a crime he has committed, and may be offered in evidence to sustain a plea in bar of trial.

Promotion of an officer is not a constructive pardon, and if pleaded in bar of trial should be overruled.

410. Action upon special pleas.—A plea to the jurisdiction or in bar of trial, the grounds therefor, and evidence introduced both in support of and against the motion should be fully entered in the record. The burden of supporting a special plea rests on the accused. The evidence necessary to establish such a plea need not prove it beyond a reasonable doubt, but only by a preponderance of the evidence. If the motion be sustained, an extract of the proceedings of the court shall be forwarded to the convening authority and the court will meet from day to day awaiting further instructions from the convening authority, who may either accept the court's ruling and direct that the prosecution on the matter involved be discontinued or may return the record to the court for a reconsideration, with a statement of reasons therefor.

411. Arraignment and plea to the general issue.—After the court has been organized, special pleas, if any, disposed of, and both parties are ready to proceed, the judge advocate will read the charges and specifications separately and in order to the accused and ask him how he pleads to each, "guilty" or "not guilty." The accused's response constitutes his plea to the general issue. The order pursued in case of several charges or specifications will be to arraign on the first, second, etc., specifications to the first charge, then to the first charge, and so on with the rest. Both judge advocate and the accused stand during the reading of the charges and specifications and the arraignment. By a plea of guilty, the accused admits without proof the averments of the charges and specifications. A plea of not guilty on the other hand calls upon the prosecution to prove the averments of the charges and specifications.

412. Same: Nolo contendere.—In proceedings before a court-martial, there is no difference in legal effect between a plea of nolo contendere and a plea of "guilty." The distinction lies in that such a plea can not be used against the accused as an admission of guilt in a civil suit for the same act. The necessity for the use of this plea before a court martial should be rare.

413. Same: Standing mute.—If the accused stands mute, the court shall direct the trial to proceed as if he had pleaded "not guilty." This same procedure shall be followed if the accused answers foreign to the purpose, or makes any other irregular answer.

414. Procedure on plea of guilty.—Should the accused plead "guilty" and should such plea be accepted, the president shall warn him that

he thereby precludes himself from the benefits of a regular defense and ask if he persists in such plea.

415. Plea of insanity.—Insanity at the time of the commission of the acts charged is a defense that should properly be made under a plea of not guilty. Insanity at the time of arraignment, or at a later stage of the trial, is a proper ground for the arrest of further proceedings. In case such a plea is made, or in case the court entertains any doubt as to the mental capacity of the accused at any stage of the trial, it should properly communicate with the convening authority, requesting a postponement of the trial, and that accused be placed under observation of medical officers.

416. Change of plea.—The request of an accused, prior to the completion of trial, that his plea be changed from guilty to not guilty should always be granted. A plea of not guilty should not be changed to a plea of guilty unless the accused personally requests the change, or affirmatively assents to such request by his counsel. When it appears that the accused entered a plea of guilty through lack of understanding of its meaning and effect, the court should direct that the plea be changed to not guilty and the trial proceed on that basis. At whatever stage in the trial a change of plea is made, it vitiates all prior proceedings on the specification to which it relates and as to them there must be a recommencement of the trial.

417. Rejection of plea.—In the following cases the plea of the accused will be rejected, a plea of not guilty entered, and the trial will proceed on that basis:

- (1) Accused persists in a plea of—
 - (a) Guilty but without criminality, or
 - (b) Guilty in a less degree than charged.
- (2) Accused after plea of guilty sets up matter inconsistent with his plea by means of—
 - (a) His statement,
 - (b) His testimony, or
 - (c) The testimony of a witness in his behalf.

This procedure is to be followed even though the court has already arrived at its finding.

(3) Accused pleads guilty to a specification, there being only one, and not guilty to the charge, or vice versa.

(4) There being more than one specification preferred under a charge and accused—

(a) Pleads guilty to one or more of the specifications and not guilty to the charge.

(b) Pleads not guilty to all the specifications and guilty to the charge.

(5) Accused enters some plea not otherwise specifically provided for and persists therein.

418. Oral arguments upon the admissibility of evidence and upon interlocutory proceedings.—Oral arguments upon the admissibility of evidence and upon interlocutory proceedings shall be allowed, but shall not be recorded; briefs of such arguments may be prepared at the expense of the party who made them, and subsequently submitted to the court and shall then be appended to the record.

419. Statement of accused.—An accused may, in any case where he so desires, make a statement. Such statement of the accused is a personal declaration and cannot legally be acted upon as evidence by the court, nor can it be a vehicle of evidence, or argument thereon, nor properly embrace documents or other writings or even averments of material facts, which, if duly introduced, would be evidence; and if such things be improperly embraced in a statement, they are entitled to no evidential weight.

A statement may operate in two ways: (1) To modify the plea of the accused when inconsistent therewith; and (2) as a plea for leniency, which may not be considered by the court except in recommending the accused to the clemency of the reviewing authority.

It is irregular and improper to have a statement sworn to. In order to bring out facts or averments as sworn testimony in defense, it is necessary that the accused himself, or a witness in his behalf, regularly take the stand and subject himself to cross-examination.

If the accused does not desire to make a statement, the record should affirmatively so state. It is not the function of counsel to make a statement, and it must not be made into an argument of counsel.

420. Same: When inconsistent with plea.—It sometimes happens that an accused will plead guilty, and then submit a statement containing matter which, had it been established by evidence following a plea of not guilty, would have supported or tended to support that plea. Such statement is inconsistent with the plea of guilty. Examples of this often occur where the accused, having pleaded guilty to desertion, submits a statement that he did not intend permanently to abandon the service, or where, having pleaded guilty to theft, he states that he intended to return the property to its owner. In such cases the procedure of section 417 should be carried out. Failure in this regard, however, will not render the proceedings void; but will render them voidable at the discretion of the convening authority if it appears to him that the interests of the accused have suffered substantial prejudice.

421. Arguments of judge advocate and of counsel.—In every case, both the accused (counsel) and the judge advocate will be afforded an opportunity to present an argument before submitting their respective cases to the court. The judge advocate has the right to make the opening and the closing argument. Both prosecution and defense should be accorded adequate opportunity fairly to present their respective cases by argument, yet the court may, in the employment of its sound discretion, so limit the time allowed for argument by each side as to avoid prolixity.

The prosecution in its closing argument should in general be limited to the discussion of propositions or matters argued by the defense. In case the judge advocate is permitted by the court to introduce any new matter in his closing argument, the defense should be afforded an opportunity for an argument on such new matter, but this does not deny the judge advocate his right to the final argument. Should the prosecution waive its opening argument, the defense thereupon may or may not make an argument, as it desires. Should the defense make no argument, the prosecution loses its right to make a closing argument. Neither the prosecution nor the defense is required to make an argument; however, the proper presentation of the case, as well for the benefit of the court as of the reviewing authority, would suggest that both prosecution and defense avail themselves of their respective rights to make argument.

422. Same: Character of.—A reasonable latitude should be allowed the judge advocate and accused (counsel) in their arguments. The testimony and any animus on the part of witnesses, the conduct, motives, and evidence of malice on the part of those upon whose complaint the accused is being prosecuted, may so far as disclosed by the proceedings, be commented upon, but the court should not permit such argument to be made the vehicle of abuse.

It is improper to state in an argument any matter of fact as to which there has been no evidence. A party may, however, argue as though the testimony of his own witnesses conclusively established facts related by them. It is highly improper for the judge advocate to comment on a failure of the accused to testify in his own behalf, but he may properly comment upon the failure of an accused, who has appeared as a witness, to deny or explain specific facts of an incriminating nature that the evidence of the prosecution's witnesses tends to establish against him. It is improper to misstate any matter of law in an argument, but on matters about which the authorities differ a party may properly state only the views favorable to his side. It is improper to state in argument that a much greater number of witnesses might have been called, or that

witnesses unavailable would have testified thus and so. In short, an argument can not be made a vehicle of getting evidence before the court. It is not evidence.

Argument should not be interrupted by the other side unless it becomes improper, in which case request should be made to the court to order that the argument be confined to proper matters, and that any improper part already made be disregarded.

423. When statements and arguments may be oral.—When the court has the services of a competent stenographer, the statement and arguments may be oral. When so made, they are entered in the record as a part of the proceedings.

424. When statement and arguments must be written.—Unless the reporter be a competent stenographer, the statement and arguments must be written before delivery, except that in a summary court martial the accused may, if he be willing to have only the substance of his statement reported, make it orally. The written statement or argument so made shall be appended to the record and should be signed by the party making it. In a summary court-martial case when only the substance of the statement is recorded, it shall be appended and certified by the recorder.

425. Method of arriving at findings.—The court is closed to deliberate upon its findings, except where the accused has plead guilty to all specifications and charges, and it is patent that the findings will be simply “proved by plea” and “guilty.” In arriving at the findings, the plea of the accused, the evidence adduced, and the arguments made are to be carefully considered. After the court has sufficiently deliberated, the president of the court shall, upon each specification of each charge, beginning with the first, put the question whether the specification is “proved”, “not proved”, or “proved in part.” Each member shall write “proved”, “not proved”, or “proved in part”—and if so, what part—over his signature, and shall hand his vote to the president of the court. The latter, after he has received all the votes upon each specification, shall read them aloud without disclosing how each member voted. Likewise, in the case of a general court martial, after the members have voted upon all the specifications of any charge, they shall in the same manner vote as to whether the accused is of such charge “guilty”, “not guilty”, or “guilty in a less degree than charged”—and if so, in what degree. No written minutes of the votes shall be preserved, unless so ordered by the unanimous vote of the court. The decision of a majority becomes the finding of the court. When there is a tie vote upon any of the findings, the accused is given the benefit thereof and the result is recorded in that way which is the more favorable to the accused.

426. Reasonable doubt.—The accused shall not be found guilty of any charge or specification or of any offense included in it unless a majority of the court are convinced of his guilt beyond a reasonable doubt. (See sec. 159.)

427. General principles controlling findings.—The finding on the charge should be supported by the finding on the specification (or specifications), and the two findings should be consistent with each other. A finding of guilty on the charge would be inconsistent with a finding of not guilty on the specification. So a finding of guilty on a well-pleaded specification apposite to the charge, followed by a finding of not guilty on the charge would be an incongruous verdict. No matter how many specifications there may be, it requires a finding of guilty on but one specification (apposite to the charge) to support a similar finding upon the charge. Evidence, except in extenuation, mitigation, or aggravation, should not be received after a finding has been reached.

428. When accused pleads guilty.—When the accused pleads guilty, the proper finding is, for the specification, “proved by plea”, and for the charge, simply “guilty.”

429. When specification is found proved in part.—It is a peculiarity of the finding at military law that a court martial, where of opinion that any portion of the allegations in a specification is not proved, is authorized to find the accused guilty of a part of the specification only, excepting the remainder; or, in finding him guilty of the whole (or any part), to substitute correct words or allegations in the place of such as are shown by the evidence to be incorrect. Provided the exceptions or substitutions leave the specification still supporting the charge (or in the case of a summary court martial still stating the same or a lesser included offense), the court may then find the accused guilty. Familiar instances of the exercise of this authority occur when there is a mistake in name and rank or rating, or an erroneous averment of time or place, or an incorrect statement as to amount or value. But the authority to find guilty of a lesser included offense or to make exceptions and substitutions in the findings does not justify the conviction of the accused of an offense entirely separate and distinct in its nature from that charged or specified. Care must be taken in all such findings not to except the words which express the gravamen of the offense in law. In making exceptions and substitutions, the court must see that the specification as found proved is grammatically complete.

430. “Guilty in a less degree than charged.”—If the evidence prove the commission of an offense less in degree than that specified, yet included in it, the court may except words of the specification, sub-

stitute others, pronounce what words are not proved and what words are proved, and then find the accused guilty in a less degree than charged, guilty of the lesser included offense. Of this form of finding, the most familiar example is the finding of guilty of "absence from station and duty without leave (or after leave has expired)" upon a charge of "desertion."

Where one of the articles of the articles for the government of the Navy does not include "attempt" in its express terms, if the specification is found proved so as to show an attempt to commit the offense charged, and not the completed offense, the accused should be found guilty of the charge in a less degree than charged, guilty of one of the general charges.

In a general court-martial case where there are two or more specifications under a charge and some specifications are found proved, and others proved in part, and as thus proved these latter support a charge of a lesser included offense, the findings on the charge should be recorded, for example: "* * * of the first charge guilty by the findings on the first and third specifications, and of the first charge guilty in a less degree than charged, guilty of * * * by the findings on the second and fourth specifications."

431. Findings on joint charges or specifications.—When two or more persons are tried in joinder, the findings and sentence (or acquittal) in the case of each person arraigned and tried shall be separately recorded.

If one (or more) of the accused persons is acquitted, and one (or more) is convicted, the findings in case of conviction must by proper exceptions eliminate the words showing that the acquitted person was a joint participant in the offense.

432. When finding is "not guilty."—In case the finding is "not guilty" upon any charge, the explicit statement should immediately follow that the court acquits the accused of such charge. In a summary court martial when the finding on any specification is "not proved," the statement should follow that the court acquits the accused of the offense specified. If the accused is found to have committed the act and done the things alleged in the specification, but without the guilty intent or knowledge essential to constitute the offense, the finding on the specification should be "not proved" and on the charge "not guilty."

433. Same: Acquittal to be announced in open court.—Should the accused be acquitted of all charges or specifications, the judge advocate, in addition to recording the findings on the record in the manner shown below, shall forthwith draw up an additional copy of the findings. This latter copy shall be duly signed by all the members and

the judge advocate. The court shall then be reopened and the judge advocate shall in the presence of the accused read aloud the findings of the court.

Thereupon the additional copy of the findings, having been first duly signed as explained above, together with a memorandum containing the substance of the charges and specifications against the accused, shall be transmitted to the commanding officer of the accused, who shall thereupon immediately release the accused from arrest and restore him to duty.

Should the court find one or more specifications proved and others not proved, the accused shall be called before the court and informed of the specifications found not proved.

434. Forms of acquittal.—The following forms of acquittal, and no others, are permitted in naval procedure:

"The court does therefore acquit."—This form, known as a *simple acquittal*, should be used in all cases, except in the few special cases to be hereinafter mentioned under other forms of acquittal.

"The court does therefore fully acquit."—The use of this form of acquittal indicates that a court not only fails to find a charge proved beyond a reasonable doubt, but that it finds no facts whatever, as brought out by the evidence introduced in the case, which reflect adversely on the conduct of the accused in connection with matters pertaining to the charge and specification. In other words, a court should not "fully acquit" in cases where the record shows any uncontroverted facts whatever reflecting upon the accused.

"The court does therefore honorably acquit."—This form is to be employed only in cases where the offense charged is, besides being an offense against military authority, of such a character that a conviction thereof would tend to dishonor the accused, such as, for example, a charge of "conduct unbecoming an officer and a gentleman." This acquittal, as in the case of a full acquittal, should never be used if the record shows any adverse reflection whatever upon the accused.

"The court does therefore most fully and honorably acquit."—This form should be used only in extreme cases in which not only have the requirements of a "full" and "honorable" acquittal been fulfilled, but in which the court wishes to place the highest stamp of approval upon the actions of the accused in connection with matters covered by the specifications. The use of this form of acquittal might, for example, be justified in the case of an officer charged with unbecoming conduct in battle if the court wished to make it a matter of record that, far from considering the conduct of such officer censurable, it both approved and commended his conduct.

It will be noted that there is no *legal* distinction between a simple acquittal and one to which any of the additional expressions above quoted has been added, and it is to be emphasized that only in exceptional cases is the use of any form of acquittal, other than the simple "acquit", justified.

Unless this rule be strictly adhered to and other forms of acquittal reserved for special cases, the distinction drawn above will soon be lost, and not only would a simple acquittal be robbed of its full absolving significance, but also the proper purposes for which the other forms of acquittal are reserved would be defeated.

435. Recording the findings.—After the court has arrived at its findings, the judge advocate is recalled and directed to enter them on the record. They are to be typewritten or in the handwriting of the judge advocate and must be free from interlineations, strike-overs, and erasures. This direction applies to the entire findings. This includes everything which properly forms a part of the findings, commencing with the words, "the (first) specification of the (first) charge." No abbreviations should be used in the findings other than the ones authorized to be used in a specification.

436. Previous convictions: Introduced.—The judge advocate shall, immediately after recording the findings, except where such findings have resulted in an acquittal, state whether or not he has any record of previous convictions by courts martial. If not, an entry to this effect shall be made in the record, but the court need not be reopened. If there be such record, the court shall be opened and the record shall be submitted to the accused for opportunity to object to its admission. If there be no valid objection, it shall be read by the judge advocate in the presence of all parties to the trial.

437. Same: Must have been approved by proper authority.—The record of the previous conviction, to be admissible, must show that such conviction was approved by the authorities whose action was requisite to give effect to the sentence. If the conviction was approved by such authority, and was not subsequently disapproved by the Secretary of the Navy, it is admissible even though the sentence of the court may have been remitted either in whole or in part.

438. Same: Must relate to current enlistment or current extension of enlistment—Exceptions.—The general rule is that the record of previous convictions, in order to be admissible, must relate to the current enlistment or current extension of the accused, if an enlisted man. On the other hand, when the last enlistment was terminated by sentence of court martial or by discharge as undesirable by order of the department, or where the accused deserted and subsequently fraudulently enlisted, all convictions occurring in the prior enlistment are admissible.

439. Same: While serving with Army.—Record of previous convictions by courts martial while serving an enlistment in the Army is not admissible as record of previous convictions before naval courts martial. But when officers and men of the Marine Corps or of the Medical Department of the Navy have been detached for service with the Army by order of the President, convictions by Army courts shall be regarded as previous convictions, subject to the provisions governing record of previous convictions set forth above.

440. Same: What record must show.—The extract from the current service record of the accused showing record of previous convictions should, in the absence of objection, or where objection is overruled by the court, be read by the judge advocate, and it should include the offense committed, the fact and nature of the trial, findings, sentence, and approval by the proper authorities, together with the dates of the offense, trial, and approval.

An official court-martial order is *prima facie* evidence of its contents and may, where it names the accused, be introduced as record of previous convictions.

A certified copy of the record of previous convictions read to the court shall be appended to the record.

441. Same: How record of, is introduced when objected to.—Record of previous convictions, if objected to by the accused, should be introduced in the same manner as evidence and is subject to the rules of evidence; it is generally documentary in form and, as a rule, is forwarded by the convening authority to the judge advocate, together with the other papers in the case. The court will rule whether or not the record shall be admitted.

442. Matter in mitigation.—After the findings the accused may introduce matter in mitigation or extenuation (see sections 164 and 165), or matter from his service record or testimony as to past character.

443. Method of arriving at sentence.—When the court has been closed for the purpose of determining the sentence, each member shall write down and subscribe the measure of punishment which he may think the accused ought to receive and hand his vote to the president, who shall, after receiving all the votes, read them aloud. Except in the case of a death sentence, which requires the concurrence of two-thirds of the members present, all sentences may be determined by a majority of votes. If the requisite number do not agree upon the nature and degree of the punishment to be inflicted, the president proceeds in the following manner to obtain a decision: He shall begin with the mildest punishment that has been proposed and, after reading it aloud, shall ask the members successively, beginning with the junior in rank, "Shall this be the sentence of the

court?" And every member shall vote *viva voce*, and the president shall note the votes. Should there be no decision, the president shall, in the same manner as before, obtain a vote on the next mild-est punishment, and shall so continue until a sentence is decided upon. A tie vote on any sentence should be reconsidered, with a view to obtaining a majority either for or against before passing on to the next sentence.

444. Punishment to be adjudged.—It is made by law the duty of courts martial, in all cases of conviction, to adjudge a punishment adequate to the nature of the offense committed. In so doing due regard must be had to the requirements of the articles for the government of the Navy and the limitations prescribed by the President for punishments in time of peace. In cases where there has been evidence in mitigation or extenuation, a court martial may recommend the person convicted to clemency; this clemency, however, is to be exercised only by the reviewing authorities, who are expressly clothed with the power to mitigate or remit punishment. Sentences must be neither cruel nor unusual, and must accord with the common law of the land and the customs of war.

The articles for the government of the Navy do not make any sentence mandatory. The statutes of the United States, however, provide that any person convicted of certain offenses, for example, desertion in time of war, shall be forever incapable of holding any office of trust or profit under the United States. The sentence of the court in such a case must provide for the dismissal or discharge of the accused. The convening authority can not approve such a sentence and then mitigate it so as to retain the accused in the service.

Where the court deems an offense found proved serious enough to warrant a sentence of imprisonment it should, except under most unusual circumstances, or where not allowed by the limitation of punishment, include in its sentence dismissal or dishonorable or bad conduct discharge; a man who has committed such an offense is not a proper person to remain in the service. Furthermore, such a sentence puts the accused in prison in a status altogether different from that of the other prisoners. A court must be careful in sentencing to confinement to include accessories in its sentence, as otherwise the man will continue to draw full pay.

The stigma of a dishonorable discharge is in itself a severe punishment. Its use should, therefore, be reserved for those cases where it is entirely proper that this stigma should attach.

445. Authorized punishments.—The punishments that a general court martial may inflict in time of peace are, in accordance with

the sixty-third A. G. N., limited to those prescribed by the President. A general court martial is also authorized to adjudge any punishment authorized for a summary court martial. The punishments that a summary court martial may adjudge are given in articles 30 and 31 of the A. G. N. A deck court may adjudge the punishments prescribed by article 30 of the A. G. N., except discharge or confinement or forfeiture of pay for a longer period than twenty days. A summary court martial or deck court must be careful to adjudge only one of the first six enumerated punishments authorized by article 30. Thus a summary court-martial sentence of confinement for two months, loss of pay, and a bad-conduct discharge is unauthorized.

446. Loss of pay.—Sentences which include forfeiture of pay shall state the rate and total amount of pay to be lost and the period of time over which such forfeiture shall extend.

Loss of pay shall be stated in dollars and not in days' pay. The loss of pay per month should not, in summary courts-martial and deck-court sentences, exceed one-half of the actual pay per month, not including extras for mess cook, gun pointers, etc., except that where the sentence includes a bad conduct discharge, the court, and the reviewing authorities should take into consideration the length of time that will elapse until the accused is transported to the receiving ship nearest to the place of enlistment. The court may then adjudge, and the reviewing authority approve, a sentence that will include the loss of all pay per month, less an amount for necessary expenses while awaiting and during transportation, and a further amount required for his immediate needs after his separation from the service, as set forth in section 470.

As loss of pay by sentence of courts martial does not include pay that may have accrued prior to the date of approval of the sentence, no loss of pay should be included in a sentence which adjudges a discharge that is to be executed immediately, and if it has been included, it should be remitted as set forth in section 470, unless the convening authority remits the bad conduct discharge conditional upon good conduct during a probationary period, in which case that part of the sentence involving loss of pay may properly be approved.

The Navy Department does not look with favor on summary court martial and deck court sentences that involve both reduction in rating and loss of pay, because of the fact that men so sentenced, in the absence of mitigating action, are penalized with both a fixed and a continuous loss of pay. But if the sentence of such court includes both reduction in rating and loss of pay in any case, the loss of pay adjudged must be figured on the rate of pay for the reduced

rating. In those cases where both reduction in rating and loss of pay have been approved, the convening authority in taking action on the record will state that the policy of the Navy Department as set forth in this section has been considered and will state his reasons for deviating therefrom.

General court martial sentences involving confinement, in the sense of imprisonment, and discharge, should contain the phrase "and suffer all the other accessories of said sentence", in which case there is effected the loss of all pay, except the sums prescribed in note 24 of section 622.

447. Confinement on bread and water.—Courts martial shall exercise care and discretion in resorting to the punishment of confinement on bread and water, and shall not adjudge it in any case for a longer period, consecutively, than five days. As a shorter interval on bread and water is less liable to work injury to health, the maximum interval allowed should be adjudged only in extreme cases.

A court in adjudging a sentence on bread and water or on diminished rations shall specify the days a full ration is to be allowed; for example, every third or every fifth day. If the court fails to do this, the convening authority shall specify in his action the day a full ration is to be allowed.

448. Recordation and authentication of sentence.—When a sentence has been determined upon, the judge advocate shall be called before the court, and, under its direction, shall draw up the sentence, specifying the exact nature and degree of the punishment adjudged, and, after approval by the court, shall enter this on the record. But it must not appear on the record what number of members voted for the sentence, except that, in the case of a death sentence, the record must explicitly state that such sentence was adjudged with the concurrence of two-thirds of the members present.

The sentence must be recorded in the judge advocate's own handwriting and must be free from erasures and interlineations. Numbers in the sentence shall be expressed both by words and by figures.

After the sentence has been recorded, the proceedings in each separate case tried by the same court shall be signed by all the members present when judgment is pronounced, and also by the judge advocate. These signatures are for authentication and do not necessarily import unanimous concurrence in rulings, findings, decisions, and other action taken. In case a member dies before signing, the signatures of the remaining members will be sufficient.

449. Vote or opinion of individual members not to be disclosed.—The members of a general court martial are sworn not to "divulge or by any means disclose the sentence of the court until it shall have

been approved by the proper authority", and not at any time to "divulge or disclose the vote or opinion of any particular member of the court, unless required so to do before a court of justice in due course of law." Subject to the exception in regard to judicial proceedings noted in the statute prescribing the oath for members of general courts martial, the vote or opinion of each member of a summary court martial, either as to the sentence of the court, or as to any other matter except recommendation to clemency, shall not be disclosed.

450. Recommendation to clemency.—The power to pardon, remit, or mitigate is expressly vested in the President of the United States or the convening authority. But if mitigating circumstances have appeared during a trial which could not be taken into consideration in determining the degree of guilt found, the members of the court, individually and not as a body, may avail themselves of such circumstances as grounds for recommending the accused to clemency. In so doing, the members signing the recommendation should set forth succinctly their reasons for making such recommendation. This recommendation is recorded immediately after the signatures of the members of the court and the judge advocate to the sentence, and is signed by the members concurring in it.

It is improper for the judge advocate to sign this recommendation. Such recommendation should never be based on a doubt as to the guilt of the accused. If there be doubt as to the guilt of the accused, he should be acquitted. If a minority of the court had such doubt and voted for acquittal, and then made a recommendation to clemency based on this doubt, they, in effect, violated their oath not to divulge the vote or opinion of any particular member.

451. Limitations of punishment prescribed by the President under authority of the 63d A. G. N.—The following limitations to the punishment of officers and enlisted men of the Navy and Marine Corps in time of peace, by naval courts martial, for each separate offense, have been prescribed by the President of the United States and shall not be exceeded. They give the maximum limit of punishment for the offenses named, and that limit is intended for those cases in which the most severe punishment should be adjudged. Members of courts martial should bear in mind the fact that these limitations are for *each separate offense*, not for each separate charge. For several separate and distinct offenses, even though they be under the same charge, the court may, at its discretion, where the circumstances warrant such severity, adjudge in its sentence the limit of punishment for each separate and distinct offense. But where all the

charges and specifications thereunder allege one and the same transaction, the court should impose punishment only with reference to the act or omission in its most important aspect.

452. Hard labor included in confinement.—In the limitations of punishment approved by the President, it is provided that where the word “confinement” is used it includes hard labor during such confinement.

453. Loss of pay and reduction in rating.—In the case of an enlisted man, loss of pay and allowances *that may become due* during the current enlistment of the convicted man, and reduction to inferior rating or rank, may be added to the limitations of punishment.

454. Limitation when a deposition is used.—In any case where a deposition is used in evidence by the prosecution by reason of the fact that oral testimony can not be obtained, as authorized by article 68, A. G. N., the maximum punishment which may be imposed shall not extend to death or to imprisonment or confinement for more than one year.

Also, as a matter of policy, where a deposition has been used by the prosecution in the trial of a commissioned or warrant officer, the maximum punishment adjudged should not extend to dismissal.

These limitations apply to all cases, whether or not the trial is for an offense for which a limitation is otherwise prescribed. Where a deposition does not enter into proof of all the specifications, the limitation applies only to those specifications into which it enters.

455. Limitation when the record of proceedings of a court of inquiry is used.—In any case in which the proceedings of a court of inquiry are used in evidence by reason of the fact that oral testimony cannot be obtained, as authorized by article 60, A. G. N. and section 220, the maximum punishment which may be imposed for an offense committed either in time of peace or in time of war shall not extend to death, or to the dismissal of a commissioned or warrant officer.

The limitations of the 60th A. G. N. do not apply where the accused himself introduces the record of the court of inquiry, as he may waive the right to be confronted by the witnesses against him. Nor does the limitation apply where the record of the court of inquiry is introduced without recourse to the 60th A. G. N.

456. Restriction upon sentences involving dishonorable discharge.—Special attention is invited to the fact that wherever in the accompanying table a dishonorable discharge is authorized, the court, if desiring to adjudge a discharge, need not adjudge a dishonorable discharge, but may in lieu thereof adjudge a bad conduct discharge. In general, dishonorable discharges should be reserved for crimes involving moral turpitude or the serious military or naval crimes.

457. Schedule of offenses and limitations.—

Offenses	Limit of punishment
UNDER ARTICLE 3	
Irreverent or unbecoming behavior during divine service.	Officer: To lose 3 numbers. Enlisted man: Confinement for 3 months and bad conduct discharge.
UNDER ARTICLE 4	
PAR. 1. Making, or attempting to make, or uniting with any mutiny or mutinous assembly, or being witness to or present at any mutiny, does not do his utmost to suppress it.	Officer: Dismissal and confinement for 15 years. Enlisted man: Confinement for 15 years and dishonorable discharge.
PAR. 1. Knowing of any mutinous assembly or intended mutiny, does not immediately communicate his knowledge to his superior or commanding officer.	Officer: Dismissal and confinement for 10 years. Enlisted man: Confinement for 10 years and dishonorable discharge.
PAR. 2. Disobeying the lawful orders of his superior officer.	Officer: Dismissal. Enlisted man: Confinement for 2 years and dishonorable discharge.
PAR. 3. Striking his superior officer while in the execution of the duties of his office.	Officer: Dismissal and confinement for 5 years. Enlisted man: Confinement for 5 years and dishonorable discharge.
PAR. 3. Assaulting, or attempting or threatening to strike or assault his superior officer while in the execution of the duties of his office.	Officer: Dismissal and confinement for 3 years. Enlisted man: Confinement for 3 years and dishonorable discharge.
PAR. 8. Sleeping upon his watch.....	Officer: Dismissal. Enlisted man: Confinement for 1 year and dishonorable discharge.
PAR. 9. Leaving his station before being regularly relieved.	Officer: Dismissal. Enlisted man: Confinement for 1 year and dishonorable discharge.
PAR. 10. Intentionally or wilfully suffering a vessel of the Navy to be stranded, or run upon rocks or shoals, or improperly hazarded.	Officer: Dismissal and confinement for 20 years. Enlisted man: Confinement for 20 years and dishonorable discharge.
PAR. 10. Maliciously or wilfully injuring any vessel of the Navy or any part of her tackle, armament, or equipment, whereby the safety of the vessel is hazarded or the lives of the crew exposed to danger.	Officer: Dismissal and confinement for 15 years. Enlisted man: Confinement for 15 years and dishonorable discharge.
PAR. 11. Unlawfully setting on fire or destroying public property not in possession of an enemy, pirate, or rebel.	Officer: Dismissal and confinement for 15 years. Enlisted man: Confinement for 15 years and dishonorable discharge.
UNDER ARTICLE 6	
Murder.....	Officer: Death. Enlisted man: Death.
UNDER ARTICLE 8	
PAR. 1. Profane swearing.....	Officer: Public reprimand. Enlisted man: Confinement for 3 months and bad-conduct discharge.
PAR. 1. Falsehood.....	Officer: Dismissal. Enlisted man: Confinement for 6 months and dishonorable discharge.
PAR. 1. Drunkenness: (1) On duty.....	(1) Officer: Dismissal and confinement for 1 year. Enlisted man: Confinement for 1 year and dishonorable discharge.
(2) Not on duty.....	(2) Officer: Dismissal. Enlisted man: Confinement for 3 months and bad-conduct discharge.
PAR. 1. Gambling.....	Officer: Dismissal. Enlisted man: Confinement for 3 months and bad-conduct discharge.
PAR. 1. Fraud.....	Officer: Dismissal. Enlisted man: Confinement for 6 months and dishonorable discharge.
PAR. 1. Theft: (1) Above \$100.....	(1) Officer: Dismissal and confinement for 4 years. Enlisted man: Confinement for 4 years and dishonorable discharge.
(2) Between \$50 and \$100.....	(2) Officer: Dismissal and confinement for 18 months. Enlisted man: Confinement for 18 months and dishonorable discharge.
(3) Under \$50.....	(3) Officer: Dismissal and confinement for 1 year. Enlisted man: Confinement for 1 year and dishonorable discharge.

Offenses	Limit of punishment
UNDER ARTICLE 8—continued	
PAR. 1. Scandalous conduct tending to the destruction of good morals.	Officer: Dismissal and confinement for 15 years. Enlisted man: Confinement for 15 years and dishonorable discharge.
NOTE.—Where the offense proved under this charge is of similar nature to one given elsewhere in this table the court shall be guided by the limit there given.	
Where an attempted or uncompleted offense is proved under this charge, the punishment must not exceed that authorized for the consummated offense.	
PAR. 2. Cruelty toward or oppression or maltreatment of any person subject to his orders.	Officer: Dismissal. Enlisted man: Confinement for 6 months and dishonorable discharge.
PAR. 3. Striking any person in the Navy: (1) If the person struck is on duty and is not a superior officer. (2) If the person struck is not on duty and is not a superior officer. (3) If the person struck is a superior officer not in the execution of his office. (4) With a dangerous weapon and wounding....	Officer: Dismissal. Enlisted man: Confinement for 6 months and dishonorable discharge. (1) Officer: Dismissal. Enlisted man: Confinement for 1 year and dishonorable discharge. (2) Officer: To lose 100 numbers. Enlisted man: Confinement for 3 months and bad-conduct discharge. (3) Officer: Dismissal and confinement for 2 years. Enlisted man: Confinement for 2 years and dishonorable discharge. (4) Officer: Dismissal and confinement for 5 years. Enlisted man: Confinement for 5 years and dishonorable discharge.
PAR. 3. Quarreling with, assaulting, or using provoking or reproachful words, gestures, or menaces toward any person in the Navy: (1) If the person quarreled with, etc., is on duty and is not a superior officer. (2) If the person quarreled with, etc., is not on duty and is not a superior officer. (3) If the person quarreled with, etc., is a superior officer not in the execution of his office. (4) With a dangerous weapon (assault)-----	(1) Officer: To lose 50 numbers. Enlisted man: Confinement for 6 months and bad-conduct discharge. (2) Officer: To lose 5 numbers. Enlisted man: Confinement for 3 months and bad-conduct discharge. (3) Officer: Dismissal. Enlisted man: Confinement for 1 year and dishonorable discharge. (4) Officer: Dismissal. Enlisted man: Confinement for 18 months and dishonorable discharge.
PAR. 4. Endeavoring to foment quarrels between other persons in the Navy.	Officer: To lose 5 numbers. Enlisted man: Confinement for 3 months and bad-conduct discharge.
PAR. 5. Sending or accepting a challenge to fight a duel or acting as second in a duel.	Officer: Dismissal. Enlisted man: Confinement for 1 year and dishonorable discharge.
PAR. 6. Treating his superior officer with contempt or being disrespectful to him in language or deportment while in the execution of his office.	Officer: Dismissal. Enlisted man: Confinement for 18 months and dishonorable discharge.
PAR. 7. Joining in or abetting any combination to weaken the lawful authority of, or to lessen the respect due to, his commanding officer.	Officer: Dismissal. Enlisted man: Confinement for 2 years and dishonorable discharge.
PAR. 8. Uttering seditious or mutinous words.	Officer: Dismissal and confinement for 1 year. Enlisted man: Confinement for 2 years and dishonorable discharge.
PAR. 9. Negligent or careless in obeying orders.	Officer: To lose 10 numbers. Enlisted man: Confinement for 3 months and bad conduct discharge.
PAR. 9. Culpably inefficient in the performance of duty.	Officer: Dismissal. Enlisted man: Confinement for 6 months and bad-conduct discharge.
PAR. 10. Not using his best exertions to prevent the unlawful destruction of public property by others.	Officer: Dismissal. Enlisted man: Confinement for 2 years and dishonorable discharge.
PAR. 11. Through inattention or negligence suffering a vessel of the Navy to be stranded, or run upon a rock or shoal, or hazarded.	Officer: Dismissal. Enlisted man: Confinement for 2 years and dishonorable discharge.
PAR. 12. When attached to any vessel appointed as convoy to any other vessel, fails diligently to perform his duty, or demands or exacts any compensation for his services, or maltreats the officers or crew of such other vessel.	Officer: Dismissal.

Offenses

Limit of punishment

UNDER ARTICLE 8—continued

PAR. 13. Taking, receiving, or permitting to be received on board the vessel to which he is attached any goods or merchandise for freight, sale, or traffic, except gold, silver, or jewels for freight or safe-keeping, or demanding or receiving any compensation for the receipt or transportation of any other article than gold, silver, or jewels, without authority from the President or the Secretary of the Navy.

PAR. 14. Knowingly making, signing, or aiding, abetting, directing, or procuring the making or signing of any false muster.

PAR. 15. Wasting any ammunition, provisions, or other public property, or having power to prevent it, knowingly permitting such waste.

PAR. 16. When on shore, plundering, abusing, or maltreating an inhabitant, or injuring his property in any way.

PAR. 17. Failing or refusing to use his utmost exertions to detect, apprehend, and bring to punishment all offenders, or to aid all persons appointed for that purpose.

PAR. 18. When rated or acting as master-at-arms, refusing to receive such prisoners as may be committed to his charge, or, having received them, suffering them to escape, or dismissing them without orders from proper authority.

PAR. 19. Absent from his station or duty without leave, or after his leave has expired.

PAR. 20. Violating or refusing obedience to any lawful general order or regulation issued by the Secretary of the Navy.

PAR. 21. Desertion:

(1) In case of surrender to naval authorities.....

(2) In case of apprehension and delivery to naval authorities.

(3) From a ship about to sail on an extended cruise.

(4) When joined in by two or more men in the execution of a conspiracy, or for desertion in the presence of an unlawful assemblage which the naval forces may be opposing.

PAR. 21. Attempting to desert.....

PAR. 21. Aiding or enticing others to desert.....

PAR. 22. Receiving or entertaining any deserter from any other vessel of the Navy, knowing him to be such, and not with all convenient speed giving notice of such deserter to the commander of the vessel to which he belongs, or to the commander in chief, or to the commander of the squadron.

Officer: Dismissal.

Officer: Dismissal and confinement for 5 years.

Enlisted man: Confinement for 5 years and dishonorable discharge.

Officer: Dismissal.

Enlisted man: Confinement for 2 years and dishonorable discharge.

For any offense under this charge the limitation is the same as for the same offense given elsewhere in this table.

Officer: Dismissal.

Enlisted man: Confinement for 1 year, and dishonorable discharge.

Enlisted man: Confinement for 5 years and dishonorable discharge.

Officer: Dismissal.

Enlisted man: Confinement for 6 months and bad-conduct discharge, plus an additional period of confinement equal to the period of absence.

Officer: Dismissal.

Enlisted man: Confinement for 2 years and dishonorable discharge.

(1) Officer: Dismissal and confinement for 1 year.

Enlisted man:

1. If less than 6 months in the service, confinement for 1 year and dishonorable discharge.

2. If 6 months or more in the service, confinement for 18 months and dishonorable discharge.

(2) Officer: Dismissal and confinement for 30 months.

Enlisted man:

1. If less than 6 months in the service, confinement for 18 months and dishonorable discharge.

2. If 6 months or more in the service, confinement for 2 years and dishonorable discharge.

(3) Six months may be added to the period of confinement in each case under 1 and 2 above.

NOTE.—There may be added to the period of confinement in each case above a period equal to the period of absence.

(4) Officer: Dismissal and confinement for 5 years.

Enlisted man: Confinement for 5 years and dishonorable discharge.

Officer: Dismissal.

Enlisted man:

1. If less than 6 months in the service, confinement for 6 months and dishonorable discharge.

2. If 6 months or more in the service, confinement for 1 year and dishonorable discharge.

Officer: Dismissal and confinement for 4 years.

Enlisted man: Confinement for 18 months and dishonorable discharge.

Officer: Dismissal.

Offenses	Limit of punishment
<p align="center">UNDER ARTICLE 9</p> <p>Absent from command without leave.....</p>	<p>Officer: Dismissal.</p>
<p align="center">UNDER ARTICLE 11</p>	
<p>Procuring stores or other articles of supplies for, and disposing thereof to, the officers or enlisted men on vessels of the Navy, or at navy yards or stations, for his own account or benefit.</p>	<p>Officer: Dismissal. Enlisted man: Confinement for 1 year and dishonorable discharge.</p>
<p align="center">UNDER ARTICLE 14</p>	
<p>PAB. 1. Presenting or causing to be presented to any person in the civil, military, or naval service for approval or payment any claim against the United States, or any officer thereof, knowing such claim to be false or fraudulent.</p>	<p>Officer: Dismissal and confinement for 5 years. Enlisted man: Confinement for 5 years and dishonorable discharge.</p>
<p>PAB. 2. Entering into any agreement or conspiracy to defraud the United States by obtaining or aiding others to obtain the allowance of any false or fraudulent claim.</p>	<p>Officer: Dismissal and confinement for 5 years. Enlisted man: Confinement for 5 years and dishonorable discharge.</p>
<p>PAB. 3. Making or using, or procuring or advising the making or using, of any writing or other paper, knowing the same to contain any false or fraudulent statement, for the purpose of obtaining or aiding others to obtain the approval, allowance, or payment of any claim against the United States or against any officer thereof.</p>	<p>Officer: Dismissal and confinement for 5 years. Enlisted man: Confinement for 5 years and dishonorable discharge.</p>
<p>PAB. 4. Making or procuring or advising the making of any oath to any fact or to any writing or other paper, knowing such oath to be false, for the purpose of obtaining or aiding others to obtain the approval, allowance, or payment of any claim against the United States or any officer thereof.</p>	<p>Officer: Dismissal and confinement for 5 years. Enlisted man: Confinement for 5 years and dishonorable discharge.</p>
<p>PAB. 5. Forging or counterfeiting, or procuring or advising the forging or counterfeiting, of any signature upon any writing or other paper, or using or procuring, or advising the using of any such signature, knowing it to be forged or counterfeited, for the purpose of obtaining or aiding others to obtain the approval, allowance, or payment of any claim against the United States or any officer thereof.</p>	<p>Officer: Dismissal and confinement for 5 years. Enlisted man: Confinement for 5 years and dishonorable discharge.</p>
<p>PAB. 6. Knowingly delivering or causing to be delivered to any person having authority to receive the same any amount of money or other public property of the United States furnished or intended for the naval service less than that for which he receives a certificate or receipt.</p>	<p>Officer: Dismissal and confinement for 5 years. Enlisted man: Confinement for 5 years and dishonorable discharge.</p>
<p>PAB. 7. Knowingly making or delivering to any person a paper certifying the receipt of any money or other property of the United States furnished or intended for the naval service thereof without having full knowledge of the truth of the statement therein contained and with intent to defraud the United States.</p>	<p>Officer: Dismissal and confinement for 5 years. Enlisted man: Confinement for 5 years and dishonorable discharge.</p>
<p>PAB. 8. Stealing, embezzling, knowingly and willfully misappropriating and applying to his own use and benefit, or unlawfully selling or disposing of any ordnance, arms, equipments, ammunition, clothing, subsistence, stores, money, or other property of the United States, furnished or intended for the military or naval service thereof.</p>	<p>Officer: Dismissal and confinement for 5 years. Enlisted man: Confinement for 5 years and dishonorable discharge.</p>
<p>PAB. 9. Knowingly purchasing or receiving in pledge for any obligation or indebtedness from any other person who is a part of or employed in the naval service any ordnance, arms, equipment, ammunition, clothing, subsistence stores, or other property of the United States, such other person not having lawful right to sell or pledge the same.</p>	<p>Officer: Dismissal and confinement for 2 years. Enlisted man: Confinement for 2 years and dishonorable discharge.</p>
<p>PAB. 10. Executing, attempting, or countenancing any other such fraud against the United States.</p>	<p>Officer: Dismissal and confinement for 5 years. Enlisted man: Confinement for 5 years and dishonorable discharge.</p>

Offenses	Limit of punishment
UNDER ARTICLE 19	
Knowingly enlisting into the naval service any person who has deserted in time of war from the naval or military service of the United States, or any insane or intoxicated person, or any minor between the ages of 14 and 19 years without the consent of his parents or guardian, or any minor under the age of 14 years.	Officer: Dismissal.
UNDER ARTICLE 22	
Affray and disorder, riot, rout, or unlawful assembly.	Officer: Dismissal and confinement for 3 years. Enlisted man: Confinement for 3 years and dishonorable discharge.
Answering for another at muster.	Enlisted man: Confinement for 3 months and bad-conduct discharge.
Attempting to destroy Government property.	Officer: Dismissal and confinement for 5 years. Enlisted man: Confinement for 5 years and dishonorable discharge.
Behaving contumaciously before a court or board.	Officer: To lose 10 numbers. Enlisted man: Confinement for 3 months and bad-conduct discharge.
Blackmail.	Officer: Dismissal and confinement for 1 year. Enlisted man: Confinement for 1 year and dishonorable discharge.
Breaking arrest.	Officer: Dismissal and confinement for 1 year. Enlisted man: Confinement for 2 years and dishonorable discharge.
Breaking quarantine.	Officer: To lose 5 numbers. Enlisted man: Confinement for 3 months and bad-conduct discharge.
Burglary or housebreaking.	Officer: Dismissal and confinement for 10 years. Enlisted man: Confinement for 10 years and dishonorable discharge.
Carelessly or negligently endangering the lives of others.	Officer: Dismissal. Enlisted man: Confinement for 1 year and dishonorable discharge.
Conduct to the prejudice of good order and discipline.	Officer: Dismissal and confinement for 15 years. Enlisted man: Confinement for 15 years and dishonorable discharge.
NOTE. —Where the offense proved under this charge is of similar nature to one given elsewhere in this table the court shall be guided by the limit there given.	
Where an attempted or uncompleted offense is proved under this charge, the punishment must not exceed that authorized for the consummated offense.	
Conduct unbecoming an officer and a gentleman.	Officer: Dismissal.
Concealing a venereal disease.	Officer: Dismissal. Enlisted man: Confinement for 6 months and bad-conduct discharge.
Criminal trespass.	Officer: Dismissal and confinement for 1 year. Enlisted man: Confinement for 1 year and dishonorable discharge.
Embezzlement (not against the United States):	
(1) Above \$100.	(1) Officer: Dismissal and confinement for 4 years. Enlisted man: Confinement for 4 years and dishonorable discharge.
(2) Between \$50 and \$100.	(2) Officer: Dismissal and confinement for 18 months. Enlisted man: Confinement for 18 months and dishonorable discharge.
(3) Under \$50.	(3) Officer: Dismissal and confinement for 1 year. Enlisted man: Confinement for 1 year and dishonorable discharge.
False imprisonment.	Officer: Dismissal and confinement for 2 years. Enlisted man: Confinement for 2 years and dishonorable discharge.
Forgery (not against the United States).	Officer: Dismissal and confinement for 3 years. Enlisted man: Confinement for 3 years and dishonorable discharge.
Fraudulent enlistment.	Enlisted man: Confinement for 1 year and dishonorable discharge.
Libel.	Officer: Dismissal. Enlisted man: Confinement for 1 year and dishonorable discharge.
Malingering.	Officer: Dismissal. Enlisted man: Confinement for 1 year and dishonorable discharge.

Offenses	Limit of punishment
UNDER ARTICLE 22—continued	
Neglect of duty.....	Officer: Dismissal. Enlisted man: Confinement for 6 months and bad-conduct discharge.
Resisting arrest.....	Officer: Dismissal. Enlisted man: Confinement for 1 year and dishonorable discharge.
Seduction.....	Officer: Dismissal and confinement for 1 year. Enlisted man: Confinement for 1 year and dishonorable discharge.
Sodomy.....	Officer: Dismissal and confinement for 12 years. Enlisted man: Confinement for 10 years and dishonorable discharge.
Unauthorized use of vehicles, boats, etc., not property of the United States.	Officer: Dismissal and confinement for 3 years. Enlisted man: Confinement for 3 years and dishonorable discharge.
Uttering (not against the United States).....	Officer: Dismissal and confinement for 3 years. Enlisted man: Confinement for 3 years and dishonorable discharge.
Wilful destruction of property (not of the United States).	Officer: Dismissal and confinement for 5 years. Enlisted man: Confinement for 5 years and dishonorable discharge.
Any offense in the act of Congress approved Mar. 4, 1909 (35 Stat. 1088), entitled "An act to codify, revise, and amend the penal laws of the United States," or in any other general statute of the United States, which is not specified in the Articles for the Government of the Navy (1).	Officer: Dismissal and confinement for the period named in the statute as the maximum period of imprisonment. Enlisted man: Confinement for the period named in the statute as the maximum period of imprisonment and dishonorable discharge.

NOTE.—Where the statute does not prescribe any period of imprisonment, dismissal or discharge shall not be adjudged, but loss of numbers not to exceed 10, or confinement not to exceed 3 months, may be adjudged.

Where the statute prescribes the punishment of death, and a naval court-martial is not authorized by the Articles for the Government of the Navy to adjudge the punishment of death for the offense, the limit of punishment shall be dismissal or dishonorable discharge and confinement for life.

(1) The following list gives the crimes deemed most likely to occur in the Navy and the maximum period of imprisonment, or, where no imprisonment is authorized, the maximum fine, that may be adjudged therefor.

Numbers, thus (18-21), indicate a title and section of the U. S. Code.

Offenses against neutrality

Accepting foreign commission to serve against friendly power (18-21).....	3 years.
Enlisting in foreign service (18-22).....	Do.
Aiding escape of interned prisoner (18-37).....	1 year.

Offenses against elective franchise and civil rights of citizens

Conspiracy to injure person in exercise of civil rights (18-51).....	10 years.
Conspiracy to prevent official from performing duties (18-54).....	6 years.
Persons in naval service intimidating or prescribing qualifications of voters, or interfering with officers of election (18-56, 57, 58).....	5 years.

Offenses against the operations of Government

Forging or altering letters patents, bonds, deeds, etc., of the United States, or transmitting same (18-71, 72, 73).....	10 years.
False papers in possession to defraud the United States (18-74).....	5 years.
Officer making false acknowledgment (18-75).....	2 years.
Falsely pretending to be United States officer (18-76).....	3 years.
False impersonation of holder of public stocks or pensioner (18-78).....	10 years.
Making threat against the President (act of Feb. 14, 1917 (18-89).....	5 years.
Conspiring to commit offense against the United States (18-88).....	2 years.
Bribery of United States officer (18-91).....	3 years.
Espionage, or communication of document, writing, or code book, etc., to person not entitled thereto (50-31).....	2 years.
Same: Communication to a foreign government (50-32).....	30 years.
Entrapping, capturing, or shooting carrier pigeons owned by the Government (act of Apr. 10, 1918, 50-111).....	6 months.
Embezzling public moneys or other property (18-100).....	5 years.
Receiving stolen property of United States (18-101).....	Do.
Forging customs entry certificate (18-119).....	3 years.
Resisting revenue officers; receiving or destroying seized property (18-121).....	1 year.
Same: Using deadly weapon (18-121).....	10 years.

Falsely assuming to be a revenue officer (18-123).....	2 years.
Offering presents to custom officer (18-124).....	Do.
Taking seized property from revenue officer (18-128).....	1 year.
Counterfeiting Government seal; fraudulently or wrongfully affixing seal of executive department (18-130).....	5 years.
Falsely making or forging naval, military, or official pass (18-132).....	Do.
Forging certificate of citizenship (18-135).....	10 years.
Forging or altering certificate of discharge from military or naval service, or aiding or assisting in same, or using such forged certificate (18-136).....	1 year.
Using false certificate of citizenship (18-139).....	5 years.
Falsely claiming citizenship (18-141).....	2 years.
Shanghaiing sailors (18-144).....	1 year.

Offenses relating to official duties

Extortion (18-171).....	1 year.
Disbursing officer unlawfully using public money (18-173).....	10 years.
Custodian failing to keep public moneys (18-175).....	Do.
Failure to render accounts (18-176).....	Do.
Failure to deposit as required (18-177).....	Do.
Officer contracting beyond specific appropriation (18-184).....	2 years.
Failure to make returns or reports (18-188).....	1 year.
False entries in accounts or records (18-189).....	10 years.
Trading in public property by disbursing officer (18-192).....	1 year.
False certificate (18-195).....	Do.
Officers interested in claim against United States (18-198).....	Do.
Accepting bribe (18-207).....	3 years.
Soliciting political contributions (18-208, 212).....	Do.

Offenses against public justice

Perjury (18-231).....	5 years.
Subornation of perjury (18-232).....	Do.
Destroying public records (18-234).....	3 years.
Destroying records by officer in charge (18-235).....	Do.
Forging signature of an officer of any court of the United States (18-236).....	5 years.
Bribery of officer authorized by any law of the United States to hear and determine any question (18-237).....	15 years.
Same: Acceptance of (18-238).....	Do.
Witness accepting bribe (18-240).....	2 years.
Attempting to influence witness, juror, or officer (18-241).....	1 year.
Conspiring to intimidate party, witness, or juror (18-242).....	6 years.
Aiding escape of person under arrest (18-246).....	6 months.
Rescuing prisoners by force (18-247).....	1 year.
Extortion by informer (18-250).....	Do.

Offenses against currency, coinage, etc.

Forging or counterfeiting securities of the United States (18-262).....	15 years.
Uttering same (18-265).....	Do.
Connecting parts of different bills, etc. (18-276).....	5 years.
Mutilating or lightening coins (18-279).....	Do.

Offenses against the Postal Service

Injuring mail bags (18-312).....	3 years.
Stealing or embezzling post-office property or other property in use by the Post Office Department (18-313).....	Do.
Stealing or forging mail locks or keys (18-314).....	10 years.
Breaking into and entering post office (18-315).....	5 years.
Stealing, secreting, detaining, or destroying mail matter (18-317).....	Do.
Injury to letter boxes (18-321).....	3 years.
Deserting the mail (18-322).....	1 year.
Obstructing the mail (18-324).....	6 months.
Using canceled stamps (18-328).....	1 year.
Same: If accused is in the Postal Service (18-328).....	3 years.
Collecting unlawful postage (18-330).....	6 months.
Mailing obscene and indecent matter (18-334).....	5 years.
Using mail to promote fraud (18-338).....	Do.
Mailing explosives, poisons, germs, etc. (18-340).....	2 years.
Same: With intent to injure.....	20 years.
Counterfeiting money orders (18-347).....	5 years.
Misappropriating postal funds or property (18-355).....	10 years.
Fraudulent use of official envelopes (18-357).....	\$300 fine.

Offenses against commerce

Importing and transporting or depositing for transport, obscene books, etc. (18-396).....	5 years.
"White slavery"—transporting women or girls in interstate or foreign commerce for immoral purposes (18-398).....	Do.
Same: When woman or girl is under 18 years of age (18-400).....	10 years.
Transporting stolen motor vehicle in interstate or foreign commerce (18-408).....	5 years.
Same: Receiving, selling, etc.....	Do.

Offenses within the jurisdiction of the United States

(Any offense given below committed by a person in the Navy is within the jurisdiction of a court martial)

Manslaughter:	
Voluntary—upon a sudden quarrel or heat of passion (18-453, 454).....	10 years.
Involuntary—in the commission of an unlawful act not amounting to a felony, or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution or circumspection (18-453, 454).....	3 years.
Assault with intent to commit murder or rape (18-455).....	20 years.
Assault with intent to commit any felony except murder or rape (18-455).....	10 years.
Assault with intent to do bodily harm with a dangerous weapon or other thing (18-455).....	5 years.
Striking, beating, or wounding (18-455).....	6 months.
Assault (18-455).....	3 months.
Attempt to commit murder or manslaughter, except as above (18-456).....	3 years.
Rape (18-457).....	Death. (But a court martial can adjudge no greater punishment than confinement for life.)
Carnal knowledge of a female under 16 (18-458).....	15 years.
Seduction of female passenger on vessel (18-459).....	1 year.
Maiming (18-462).....	7 years.
Robbery (18-463).....	15 years.
Arson of dwelling house (18-464).....	20 years.
Arson or destruction of other buildings, beacon, etc. (18-465).....	Do.
Receiving stolen goods (18-467).....	3 years.
Attacking vessel with intent to plunder (18-489).....	10 years.
Breaking and entering vessel (18-490).....	5 years.
Circulating obscene literature, picture, etc. (18-512).....	Do.
Polygamy (18-513).....	Do.
Unlawful cohabitation (18-514).....	6 months.
Adultery (18-516).....	3 years.
Incest (18-517).....	15 years.
Fornication (18-518).....	6 months.

Opium or coca leaves

Having opium, or coca leaves, their salts, derivatives, or preparations in possession, or selling, bartering, or giving away same, without being registered (26-1387 (c))... 5 years.

458. Revision must be before same court.—Upon the receipt of the record of a court martial the reviewing authority shall proceed at once to examine it in order that it may be returned for revision, if such course be necessary, before the dissolution of the court. If the reviewing authority return the record for revision the letter returning it must be signed by him, and must be bound in with the record. Jurisdiction in revision must be affirmatively shown the same as jurisdiction originally. When a court has been dissolved it ceases to exist and cannot be resurrected. Consequently a record can not be returned for revision after the court has been dissolved, although the same members constitute the new court as constituted the old.

459. Same: Except in the case of a summary court martial where the original sentence would injure the health of the accused.—The only case in which a revision may be had by a court martial other than the one which sat originally is where the medical officer certifies that the execution of the original sentence of a summary court martial would be seriously injurious to the health of the accused. In such a case the new court is restricted in its action to review of the record of the former trial and a redetermination of the sentence. No further testimony shall be admitted.

460. Legal quorum required for revision.—Should the reviewing authority decide to reconvene the court in order to amend or other-

wise remedy a defect or omission in the record, or for a reconsideration of its findings or sentence, which may be done when the facts warrant (but subject to the conditions of sec. 475), the record shall show that at least five members of a general court martial which originally sat upon the trial and a judge advocate are present. A correction can not be made unless there is a legal quorum present. In the case of a summary court martial all of the original members must, of course, be present except as noted in the preceding section.

461. Judge advocate on revision.—It is not necessary that the same judge advocate officiate on the revision of a case as took part in the original proceedings. If a new judge advocate be detailed, however, the orders of the convening authority, modifying the precept in that respect, shall be read and a copy prefixed to the record in revision. Also, the order convening the court in revision shall not be read until after the new judge advocate has been sworn.

462. No new evidence admissible.—When a court is ordered to revise its proceedings, new evidence shall not be admitted.

463. Record in revision.—During a revision an entirely separate record shall be kept, to which the order for reassembling must be prefixed, and which shall itself be prefixed to the record of which it is a revision. A full entry shall be made of all the proceedings, verified in the ordinary manner by the signatures of all the members of the court present and the judge advocate, and transmitted, as before, to the reviewing officer for his approval. In the case of a deck court the record in revision shall be typewritten on thin bond paper uniform in size with the deck court card and pasted to it at the top.

464. Clerical errors or omissions, how corrected.—Clerical errors or omissions in the original record may be amended by the court in revision without the presence of the accused, but they are not to be corrected in an informal manner by erasure or interlineation. The legal procedure is for the proper officer to reconvene the court, calling its attention in the order for reassembling to the error requiring correction, and for the court, on reassembling, to decide as to the correction to be made, and to incorporate it as a part of the record of proceedings in revision.

465. Presence of accused.—It is not in general necessary or desirable that the accused be present at a revision. When, however, any possible injustice may result from his absence, he should be permitted to be present with counsel, if desired. Thus, where the defect to be corrected consists of an omission properly to set forth a motion made or an objection taken by the accused, it may be desirable that he should be present in order that he may be heard as to the proper

form of the proposed correction. But where the error consists of the omission of a formal statement only, or a reconsideration of the findings or sentence, the presence of the accused is not in general called for.

466. Findings and sentence revised in closed court.—The court will be closed during a revision of the findings and sentence.

467. Revision affecting findings and sentence—Court's action to be in handwriting of judge advocate.—The findings or sentence in revision must be in the handwriting of the judge advocate. In a revision of a case the statement, "The court does respectfully adhere to its former findings (sentence)", is equivalent to a rewriting of findings (sentence), and shall be in the handwriting of the judge advocate.

468. Where revision of findings results in acquittal.—If the trial originally resulted in conviction, but on revision in acquittal, the acquittal will be announced in open court in accordance with usual procedure.

469. Sentence not effective until approved.—No sentence of a court martial may be carried into execution until the entire proceedings have been reviewed and the sentence duly approved in accordance with law. The law governing a general court martial in this regard is given in the 53d A. G. N.; of a summary court martial in the 32d A. G. N.; and of a deck court in article 64 (*d*). The approval of the convening authority of a general court martial is sufficient, except for sentences extending to death or to dismissal of a commissioned or warrant officer. When the confirmation of a sentence requires the approval of higher authority, the record should be forwarded to the next higher reviewing authority by the convening authority with his approval endorsed thereon.

Where confinement has been adjudged, it shall take effect from the date of approval of the sentence by the highest reviewing authority required by law to approve it, except that where the accused has been previously sentenced to confinement for another offense, the confinement shall not take effect until the former sentence has been served, nor shall a discharge, if adjudged, be executed until both sentences have been served. In such a case, care should be taken in approving the later sentence to state that the period of confinement shall not begin to run until the former sentence has been served. Where discharges have also been adjudged in both cases, the first should be remitted in approving the second. If a discharge has been adjudged in the first sentence only, the action on the second case should direct that it be withheld until the second sentence has been served. Should an unusual time elapse between the date of confinement of the accused for trial and the date of approval of the sentence, this period should be considered by the convening authority in

acting upon the case as a ground for mitigation. Should the sentence be to solitary confinement or to confinement on reduced rations, the time of such conditional confinement must be fulfilled unless such provision of the sentence be remitted or mitigated by the convening or higher authority.

470. Execution of dishonorable and bad-conduct discharges.—In all cases of dishonorable and bad-conduct discharges, outer garments of the uniform will be retained by the Government and an outfit of civilian clothes furnished in lieu thereof. Men discharged, except those who have served a term of imprisonment in a naval prison on shore or at a receiving ship designated in lieu thereof, will not be regarded as “discharged naval prisoners” within the meaning of 34 U. S. Code 961 and 962, providing for allowances to prisoners on discharge, but men discharged with a dishonorable discharge, bad-conduct discharge, or any other discharge for the good of the service shall, under 34 U. S. Code 197, upon discharge be paid a sum not to exceed \$25, or such portion thereof as will, together with other funds available to the man, exclusive of travel allowance or transportation in kind, total \$25. 34 U. S. Code 722 also provides that the appropriation, “General expenses, Marine Corps”, shall be available for the purchase of civilian outer clothing, not to exceed \$15 per man, to be issued, when necessary, to marines discharged for bad conduct, undesirability, unfitness, or inaptitude.

In sentences involving a dishonorable or bad-conduct discharge, together with loss of pay, the latter should, whenever necessary, be remitted to such an extent as to leave the discharged man sufficient money for his immediate needs after his separation from the service.

471. “Reviewing authority” defined.—Any officer to whom the proceedings of a court martial are regularly submitted for review in accordance with law is a reviewing authority. When, as is ordinarily the case, such officer is the convening authority, this latter term should, in order to avoid confusion, be used in referring to him, even while exercising the functions of a reviewing authority.

472. Matters to be specially considered by the reviewing authority.—In reviewing courts martial: (a) Objections to the jurisdiction of the court should always be considered whether or not made at the trial or on review.

(b) Objection to the charges or to the specifications should not be considered unless made at the trial, except where a charge or specification fails to state an offense. Where a specification fails to support the charge under which it is laid but supports some other charge, and

the punishment imposed by the court is excessive for the appropriate charge, the reviewing authority should reduce the sentence to an amount commensurate with such appropriate charge.

(c) Sufficiency of the evidence to sustain the finding of the court should always be considered by the reviewing authority, keeping in mind the duties of the court in weighing the evidence before it.

(d) All objections made at the time of the trial and the ruling of the court on these objections should be carefully considered, especially if adverse to the accused.

(e) If there has been no miscarriage of justice, the finding of the court should not be set aside or new trial granted because of technical errors or defects which do not affect the substantial rights of the accused.

Reviewing authorities in acting upon a record should bear in mind the maxim "The law does not regard small matters", and should not disapprove on account of deviations in immaterial ways not tending to prejudice the rights of any individual.

472½. Action of reviewing authority on acquittal.—No action shall be taken by a reviewing authority which purports to approve or disapprove an acquittal or finding of not guilty or not proved. Approval in such cases is not required and disapproval cannot affect the finality of the proceedings, if legal, as a bar to a second trial for the same offense. If a reviewing authority does not concur in the finding of the court, he may so state in his action upon the record, giving such reasons as he may deem appropriate for the information of the members of the court and other reviewing authority.

Where the case is deemed to be illegal because of a jurisdictional defect or a fatally defective specification, the reviewing authority shall so state in his action upon the record for consideration of the Secretary of the Navy, who is empowered to set aside the entire proceedings.

473. Power of reviewing authority: Returning record.—The power of a convening authority in returning any record to the court is limited to a revision of its findings or sentence or the correction of clerical errors or omissions in the record of proceedings, and, in the event of the court's adherence to its former conclusions, to disapproval of such action. It is not in the power of the convening authority to compel a court to reverse its decision upon a motion or plea, when the court's ruling has terminated the trial, or to change its findings or sentence, when, upon being reconvened by him, it has declined to modify them, nor either directly or indirectly to enlarge the measure of punishment imposed by a court martial, nor to coerce a court to adopt his

view upon any question arising in the course of its proceedings. When the proceedings, findings, or sentence of a court are illegal, the convening authority should set them aside.

The convening authority in his remarks returning a record for revision should not, in effect, threaten disciplinary action against the members of the court.

474. Same: When he is not to return record.—Unless specifically authorized by the Secretary of the Navy in each case, no authority will return a record of trial to any court for reconsideration of (a) an acquittal, (b) a finding of not guilty to any specification, or (c) the sentence originally imposed with a view to increasing its severity, and no court in any proceedings in revision shall reconsider its finding or sentence in any particular in which a return of the record of trial for such reconsideration is herein prohibited. In rare cases, where reviewing authorities consider that strict adherence to the provisions of this section would result in a miscarriage of justice, they may withhold action and report the circumstances to the Navy Department with request for authority to reconvene the court for any of the purposes above mentioned.

475. Same: Remitting or mitigating sentences.—In cases where the proceedings must be approved both by the convening authority and higher reviewing authority before the sentence becomes effective, and where the convening authority has mitigated the sentence imposed by the court, the action of the higher authority is limited to the sentence as mitigated. Such higher authority cannot disapprove the mitigation of the convening authority and thus restore the original sentence.

Reviewing authorities in mitigating or remitting sentences should not thereby keep an accused guilty of an offense involving moral turpitude in the service.

Article 54 (a), A. G. N., extends only to such sentences as the convening officer is authorized to approve and confirm, and has no application where the punishment of dismissal or loss of life, requiring confirmation by the President, is adjudged.^{1a}

476. Same: Conditional remission.—Sentences not involving death or dismissal may, in the discretion of the convening or reviewing authority, be conditionally remitted in lieu of being summarily executed, and, as a general rule, it is desirable that this be done with respect to sentences of discharge adjudged for first offenses not of a serious nature. The period during which a sentence is held in abeyance is a probationary period and the commanding officer may exe-

^{1a} *Bishop v. U. S.*, 197 U. S. 341.

cute the sentence at any time during such period if he deems the probationer's conduct warrants such action. In such a case, the commanding officer of the accused should be directed to make full report to the Navy Department (J. A. G.) of the reason therefor. Probationary periods cannot extend beyond the current enlistment of the man concerned. If a man serves his probationary period as herein specified, the remission of the sentence becomes unconditional without further action.

477. Same: Ordering new trial.—If the court was without jurisdiction or if none of the charges or specifications alleges an offense, the reviewing authority should disapprove the proceedings, findings, and sentence and convene a new court for the trial of the case. The new trial should be had upon the same charges and specifications, unless the disapproval is based on fatal defects therein, in which event, new charges and specifications should be drawn correctly setting forth the offenses intended to be charged at the previous trial, provided that such new charges and specifications are not barred by the statute of limitations.

In cases not covered by the foregoing paragraph, if the record discloses errors to the substantial injury of the accused and timely objection was made by him at the trial, the reviewing authority before acting upon the record should afford the accused an opportunity to request a new trial, provided the record irrespective of the errors disclosed is sufficient to sustain the finding of the court. Should the accused decline or fail to apply for a new trial within the time allowed by the reviewing authority, the latter should take action upon the proceedings, findings, and sentence without regard to such errors.

If the reviewing authority grant a new trial upon petition of the accused, he should order the accused before a new court on the same charges and specifications originally preferred against him unless the reasons for retrial were based on defects in the charges or specifications, in which case new charges and specifications should be prepared correcting the pleading previously objected to, if such new charges are not barred by the statute of limitations; but the accused should not be tried for any offense of which he was found not guilty by the first court. New trial being granted, the proceedings, findings, and sentence of the previous trial should be set aside.

478. Effect of disapproval.—The disapproval of the sentence of a court martial by the reviewing authority is not a mere expression of disapprobation, but has the legal effect of entirely nullifying it. In case of disapproval, the accused must be immediately released from arrest. A reviewing authority cannot disapprove a sentence and then proceed to mitigate it, or place the accused on probation, or

carry it into effect in any way, for, after disapproval, there is nothing left to mitigate or carry into effect.

479. Reviewing power vests in office of authority so acting.—The reviewing power, as well as the convening power, of a court martial vests in the office, not in the person, of the authority so acting. Thus, when the reviewing power is vested in the convening authority and the officer who has ordered the court has been relieved or is absent, it is competent for his successor in office, whether temporary or permanent, to act as reviewing authority.

480. Same: May not be delegated to inferior.—The reviewing authority cannot delegate to an inferior or other officer his function as reviewing authority as conferred by the articles for the government of the Navy, nor can he authorize a staff or other officer to subscribe for him his decision and orders on the proceedings. He will sign in his own hand the action taken by him on the proceedings. His rank and official position should appear after his signature.

481. Commutation of sentences.—The power to commute sentences, that is, to change the nature of the punishment, is not vested in any officer of the Navy. Every officer who is authorized to convene general courts martial is empowered by Article 54 (*a*), A. G. N., to remit or mitigate, but not to commute, any sentence which by Article 53, A. G. N., he is authorized to approve and confirm. The broad power conferred upon the Secretary of the Navy by Article 54 (*b*), A. G. N., to mitigate the sentence imposed by any naval court martial includes the power to commute a death sentence to life imprisonment,² and dismissal to loss of numbers or suspension from duty on one-half pay. In summary courts-martial cases, the immediate superior in command has the same power as that vested in the convening authority by Article 33, A. G. N., which is in terms confined to remitting the whole or a part of the sentence adjudged by the court and does not include power to commute a sentence; for example, he cannot change a sentence of bad-conduct discharge to a specified loss of pay or confinement to restriction to ship or station.

482. Sentences in excess of limitation of punishment.—Where a sentence in excess of the limitations of punishment prescribed by the President in time of peace is adjudged, and it is divisible, such part as is legal may be approved and executed. Where a sentence of a summary court martial or deck court is in excess of the legal limitation, the reviewing authority may approve a part of the sentence adjudged, disapprove the rest, and execute the legal sentence remaining.

² *Aderhold v. Menefee*, 67 Fed. (2d) 345.

483. Superior authority may return record for revision, provided court has not been dissolved.—The court cannot, after it has once duly completed and forwarded the record, recall it for modification, nor can the convening authority, after he has acted upon the record and forwarded it. But a superior authority, required by law to review the proceedings, may return the record to the convening authority, requesting that the court be reconvened. This may not be done, however, in contravention of section 474.

484. Dissolution of court.—A court martial is dissolved by the order of the authority who convened it. Such order may be oral. When so dissolved, the court cannot legally be reconvened.

CHAPTER V

INSTRUCTIONS REGARDING MAKING UP RECORD OF PROCEEDINGS

500. Introductory.—The term “president” shall be read “senior member”, where applicable, and the term “judge advocate” shall, in general, include a recorder. Sections 500 to 516 apply equally to courts of inquiry and boards of investigation, as well as to courts martial.

501. Records of proceedings to be typewritten.—Except under extraordinary and unusual conditions of service, records of all courts and boards shall be typewritten. Reporting may be in shorthand.

502. Same: How made up and bound.—The record shall be typewritten on paper 8 by 13 inches in size. One side of the paper shall be used, leaving a margin of 1 inch on the left, one-half inch on the right, and $2\frac{1}{2}$ inches at the top of each leaf. Each page shall be numbered in the middle of the margin at the lower edge. In making up the record, it sometimes happens that the pages are not numbered consecutively, as, for example, where a page is inserted and numbered 73-a, $360\frac{1}{2}$, etc. Where this occurs a notation shall be placed at the bottom of the preceding page calling attention to this fact, as, for example, “next page numbered 73-a”, or “next page numbered $360\frac{1}{2}$ ”, etc. When the conditions mentioned in the preceding section render it necessary that the record be written in longhand, the penmanship must be clear and legible and the record free from unauthorized erasure or interlineation. Before the record is forwarded to the convening authority, all pages, documents, and exhibits must be securely bound together by through fasteners at the top margin, and care shall be taken to insure against detachment. Where the record is long, it should be bound in volumes, each having a proper cover sheet, and marked near the lower margin “Vol. I”, etc. Should the exhibits be objects that do not permit of being secured in the manner indicated, they shall be otherwise attached to the record so as to prevent the possibility of loss, or, if necessary, forwarded under separate cover.

503. Cover sheets.—A neat cover sheet shall be prefixed to the whole record, following the standard forms given under the procedure of

the various courts and boards. In a summary court martial case the front cover sheet shall be the one furnished by the Navy Department. At the end of the record, following all appended documents, there shall be attached a heavy blank sheet to act as a protection to the record. The date on the front cover sheet shall be the date when the court or board first convened for the case in question.

504. Questions numbered and paragraphed.—The questions asked each witness shall be numbered consecutively throughout the examination. If the examination is interrupted by recess or adjournment and is resumed when the court reassembles or reconvenes, the numbering shall be continued. If, however, the first examination of the witness is completed, and later in the trial he is recalled, the numbering of the questions asked on this later examination shall begin anew. Each question and answer of a witness shall begin a new paragraph.

505. Recess or adjournment.—When the business of the court is suspended from one day to the next, or for a longer period, the record shall show that the court *adjourned* until the time agreed upon; but when the period of suspension of business is from one part of a day to another part of the same day, the record should show that a *recess* was taken for the time mentioned. The 45th A. G. N. enjoins a general court martial to sit from day to day, Sundays excepted, unless temporarily adjourned by the authority which convened it. A summary court martial shall also observe these provisions.

506. Reading of record.—In reading the record of the previous day upon the opening of the court on each successive day, only the salient features of the proceedings need be read. It is not necessary at this time to read the testimony recorded. The ruling of the court or board on questions submitted for decision should be read. Before the proceedings are finished, the record up to that point must have been approved.

507. Order in which documents are prefixed or appended.—In making up records, documents modifying or relating to the precept and to the charges and specifications are prefixed immediately following the precept or the charges and specifications, as the case may be. Documents relating to occurrences during the procedure are appended immediately following the record of the trial in the order in which they occur. Exhibits are appended after these latter documents in the order in which they were introduced into evidence.

508. Numbering and marking of pages and documents.—All documents other than instruments of evidence shall be marked with capital letters, as A, B, C; instruments of evidence shall be marked "Exhibit 1", "Exhibit 2", etc. When a single document or instrument of

evidence is more than one page in length, each page thereof must be marked, for example, A (1), A (2), etc., Exhibit 1 (1), Exhibit 1 (2), etc. All such marks must be boldly and distinctly made and placed in the lower right-hand corner of the page or sheet. All copies of documents which may be appended to the record shall be certified "A true copy" by the judge advocate.

When an officer certifies over his signature that a document is a true copy of some other writing, it should be an exact copy of said other writing, and not a summary of the substance thereof.

509. Precept, modification of.—The modifications of the precept are those which are signed and issued by the convening authority, and they must not be confused with the personal individual orders to officers to perform duty on the court, which are issued separately by the Bureau of Navigation, Major General Commandant of the Marine Corps, or convening authority, as the case may be. These modifications of the precept must appear immediately after it as a part of every record where changes have been made in the composition of the membership. These are not instruments of evidence and are marked "B", "C", etc.

In case a court is convened by dispatch, a confirmation copy signed by the convening authority is required.

510. In case of absence of members.—In the case of absence of a member on leave or duty authorized by proper authority, with the knowledge and approval of the convening authority, a copy of the order permitting or directing the absence must be made a part of the record following immediately after the precept and its modifications. Similarly in case of unauthorized absence, the statement of the absent member with regard to his absence must appear.

511. Manner in which corrections are made.—If corrections should be necessary, they shall be made by the judge advocate in red ink and initialed by him in the right-hand margin. An undue number of corrections, or a lack of neatness in making them, will be sufficient cause for returning a record for rewriting.

512. When a witness corrects his testimony.—The following instructions will be observed whenever a witness corrects or amends his testimony:

(a) In every case the original testimony must remain in the record as originally given.

(b) Inclose in parentheses, *in red ink*, that portion of the original testimony that has been corrected or amended by the witness.

(c) In the left-hand margin of the record, opposite the original testimony—enclosed in parentheses, as directed in (b)—enter, *in red ink*, a note referring to the page of the record where the correction

to testimony is to be found. For example, "See correction, page —." Or,

(d) Where corrections are short, enclose the original testimony in parentheses—as directed in (b)—and enter the correction, *in red ink*, close to the original testimony which it corrects.

(e) Typographical corrections in testimony will be in red ink and initialed by the judge advocate, as indicated in section 511.

513. Index for lengthy cases.—If a record exceeds 20 pages in length, it shall be preceded by an index showing upon what page each step of the proceedings and of the examination of the witnesses, designating them by name, may be found; also, in case a witness corrects his testimony the index shall show the pages where such corrections may be found. There shall also be an index of exhibits offered and received in evidence, giving a brief description of the document, etc., and at what page of the record it was admitted in evidence.

514. Reading of papers.—Where the record states that a paper, document, or testimony was read, it is to be understood that it was read *aloud*.

515. Letters of transmittal not required.—Letters of transmittal are not required in forwarding to the Navy Department records of proceedings of courts-martial and other courts and boards.

516. Striking matter from record.—Should the court or board determine that matter objected to should be stricken from the record, such decision shall be so recorded, but the matter referred to shall not, itself, be physically stricken from the record.

ADDITIONAL INSTRUCTIONS FOR COURTS-MARTIAL

517. Records of proceedings.—Every court-martial will keep an accurate record of its proceedings. The judge advocate is directly responsible for seeing that this is done. The record of a deck court shall be made on the card furnished by the Navy Department. The record of proceedings in each case tried shall set forth the names of the members of the court who were present during the trial; that the accused was furnished a copy of the charges and specifications against him; that the precept was read aloud in the presence of the accused; that he was afforded an opportunity to challenge members; and that the members, judge advocate or recorder, reporter, interpreter, and witnesses were duly sworn. It shall further show the arraignment, preliminary motions, pleas, objections, and grounds therefor, all testimony and documentary evidence received, decisions and orders of the court, adjournments, statements and closing argu-

ments, findings, and sentence or acquittal; in short, the entire proceedings of the court which are necessary to a complete understanding by the reviewing authority of the whole case and every incident material thereto.

Each case is thus made complete in itself and the record continuous. When all the cases laid before the court have been finished and severally authenticated and forwarded, the president shall, unless otherwise directed by the convening authority, inform the said authority that all business before the court has been completed, and the court shall adjourn to await the action of the convening authority.

518. Presence of accused during subsequent reading of record.—If the court adjourn after arriving at a finding and sentence (or acquittal) to meet the next day for the purpose of verifying the record, the record of proceedings of the succeeding day should distinctly show that the accused was present during the reading of so much thereof as referred to the proceedings in open court, that he then withdrew, and that the court was cleared, the judge advocate remaining, whereupon that part of the record which pertained to the proceedings in closed court was read.

519. Medical certificate required.—Whenever any person is sentenced for a period exceeding ten days to confinement on diminished rations or on bread and water, there must appear on the record of proceedings the certificate of the senior medical officer under the immediate jurisdiction of the convening authority to the effect that such sentence will not be seriously injurious to the health of the prisoner.

520. Completion of record.—After the proceedings and sentence, with the recommendation to clemency, if any, have been signed, the action of the court, whether an adjournment or the taking up of a new case, shall be recorded; after this entry has been authenticated by the signatures of the president and the judge advocate, the record is completed.

521. Copy of record for accused.—The accused is entitled to a copy of the proceedings of a general court martial, certified as true by the judge advocate. It is the duty of the judge advocate to furnish such copy upon completion of the trial and it shall be noted on the cover page that this has been complied with. The copy should contain a record of all the proceedings except the findings, sentence, recommendation to clemency, and action of the convening authority. These latter may be obtained by the accused, however, upon application to the Navy Department (J. A. G.).

The accused is also entitled to a certified copy of a record in revision to the same extent as he is to a copy of the original proceedings.

522. Same: Receipt appended.—The receipt of the accused for his copy of the proceedings shall be the last document appended to the record of a general court martial.

523. Shorthand notes.—The judge advocate will retain all notes, including shorthand notes, if any, from which the record was made up. The judge advocate may destroy the notes when notified that the final action on the case has been promulgated by the Judge Advocate General.

524. Final disposition of record.—The records of proceedings of all courts martial shall be forwarded, unfolded, direct to the office of the Judge Advocate General by the convening authority. General courts-martial records are forwarded by the convening authority after action thereon, except when convened by the Secretary of the Navy, in which case, the records are forwarded by the presiding officer of such courts. Records of summary courts martial and deck courts are forwarded after the proper reviewing authorities have taken action thereon, effected the necessary publication, and caused the notation of checkage to be signed. The above applies equally in cases of revision.

525. Action to be taken in case of loss of record.—When, prior to action by the reviewing authority, a record of trial by court martial is lost or destroyed, a new record of trial in the case will, if practicable, be prepared and will become the record of trial in the case. Such new record will, however, be prepared only when the extant original notes or other sources are such as to enable the preparation of a complete and accurate record of the case. In any case of the loss of a record of trial by court martial, the convening authority will be fully informed as to the facts and as to the action, if any, taken.

In case the stenographic notes or other report of the trial be lost before the record has been written up, the record shall be prepared so as to show that the interests of all parties to the trial have been safeguarded; who were witnesses for and against the accused and a summary of their testimony; the substance of all evidence admitted over the objections of the accused or his counsel; that the accused was given an opportunity for cross-examination; and any other steps required by law to be shown. The record thus prepared will be drawn up in all respects as nearly as may be like the record required by the foregoing sections of this chapter, and will be submitted in due course to the convening authority in the regular manner together with a letter attached thereto stating the reasons for such procedure.

ADDITIONAL INSTRUCTIONS FOR COURTS OF INQUIRY AND BOARDS OF INVESTIGATION

526. Finding, opinion, and recommendation should be typewritten.—The findings, opinion, and recommendation should be typewritten. A copy thereof is to be prefixed to the entire record.

527. Disposition of record and copies.—After action upon the original record by the convening authority, it shall be forwarded through the regular channels to the Judge Advocate General. A complete copy will be plainly surcharged in red pencil across the cover page "Advance Copy", and at the same time the original record is transmitted to the convening authority the judge advocate will mail the "Advance Copy" direct to the Judge Advocate General.

No party to an inquiry or investigation can demand a copy of the proceedings. The evidence, findings, opinion, and recommendation, of whatever nature, are intended only for the officer ordering the court or board. and for higher authority, except as hereinafter provided.

In the case of a collision with a merchant vessel at least four complete copies of the report of the court or board should be prepared; the original forwarded through the regular channels to the Navy Department and bearing on its face the number of copies and names of the persons to whom transmitted; one copy to be plainly surcharged in red pencil across the cover page "Advance Copy", this copy to be mailed direct to the Judge Advocate General by the judge advocate at the same time the original is forwarded to the convening authority; one copy to be retained by the convening authority; and one copy furnished to the commanding officer of the naval vessel concerned. A copy will *not* be given the master, owners, or agents of the merchant vessel.

528. Revision.—In case of revision, the record of proceedings should be prefixed to the original proceedings. It shall be made up in the same manner as the original record.

CHAPTER VI (1)

GENERAL COURT-MARTIAL PROCEDURE

PART I. THE TRIAL

540. Cover page.—

Case of

X—— Y. Z——,

Seaman second class,

U. S. Navy,

November 4, 19—. (2)

RECORD OF PROCEEDINGS

OF A

GENERAL COURT-MARTIAL

CONVENED ON BOARD THE (3)

U. S. S. COLORADO

BY ORDER OF

THE COMMANDER, BATTLESHIPS, BATTLE FORCE, U. S. FLEET

(4)

Copy furnished (5)

(1) This chapter shows how a record of trial by general court-martial is made up. The object is to show each paper and entry in the order in which it should appear in the completed record, except that in this chapter the record in revision appears after the record of the original proceedings, whereas in the completed record it should be prefixed. Each separate step in the trial is given a section number in this chapter to indicate clearly that it is a separate step, and for ease of reference. The section numbers and headings given in this book are not to be repeated in the record of the court. Each of the separate steps so indicated, obviously, may not occur in any one trial.

For the general provisions governing making up records see secs. 500 to 525.

(2) This is the date of first convening for this trial.

(3) Variation:

“convened at

“THE NAVY YARD, PHILADELPHIA, PA.

“by order of

“THE SECRETARY OF THE NAVY”

(4) Had there been no revision in this case, the notation relative to the sending of letters appearing in sec. 636 should be placed here by the convening authority (sec. 642, note 65).

(5) Secs. 521 and 522.

541. Index for lengthy case (6).—

X——Y. Z——,

Seaman second class, U. S. Navy,

Trial by general court martial on board the U. S. S. *Colorado*,
November 4, 19—

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(6) An index is required whenever a record exceeds 20 pages in length.

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542. Precept (7).—

File ———.

UNITED STATES FLEET,
BATTLESHIPS, BATTLE FORCE,
U. S. S. WEST VIRGINIA, Flagship.

SAN PEDRO, CALIF.,
October 29, 19—.

From: Commander Battleships, Battle Force.

To: Captain A—— B. C——, U. S. Navy, U. S. S. *Colorado*.

Subject: Precept for a general court martial.

1. Pursuant to the authority vested in me by the Secretary of the Navy (8) (Navy Department's file A17-11 (1) (310126) of March 18, 1931) (9), a general court martial is hereby ordered to convene on board the U. S. S. *Colorado* at 10 o'clock a. m., on Wednesday, November 2, 19—, or as soon thereafter as practicable, for the trial of such persons as may be legally brought before it.

2. The court is composed of the following members, any five of whom are empowered to act, viz (10) :

(7) For explanation of what the precept is see sec. 345. As to showing of jurisdiction in the precept see secs. 327 to 341.

(8) None other than the Secretary of the Navy can give this authority (art. 38, A. G. N.).

(9) In case the convening authority has the power to convene a general court-martial by virtue of his own position (art. 38, A. G. N.), par. 1 of the precept begins at this place.

(10) As to the personnel of the court see sec. 346. Omit the clause "any five of whom are empowered to act", where but five are appointed.

Five members form a quorum.—The number of members may be reduced by various causes during a trial, but so long as five members remain the court is a legal court and can proceed. If reduced below the number of five, the court must still meet and adjourn from day to day until the absent members return, or until sufficient additional members are detailed, or until the court is authorized to adjourn for a longer period, or is dissolved by the convening authority who should be notified of the condition of affairs.

Captain A—— B. C——, U. S. Navy,
 Commander D—— E. F——, U. S. Navy,
 Commander G—— H. I——, Supply Corps, U. S. Navy,
 Lieutenant Commander J—— K. L——, Medical Corps, U. S.
 Navy,
 Major M—— N. O——, U. S. Marine Corps,
 Lieutenant Commander P—— Q. R——, U. S. Naval Reserve
 (11),

Lieutenant U—— V. W——, U. S. Navy, and of
 Captain C—— B. A——, U. S. Marine Corps, and Lieu-
 tenant (j. g.) F—— E. D——, U. S. Naval Reserve, as judge
 advocates, either of whom is authorized to act as such (12).

3. (13) No other officers can be detailed without injury to the
 service (14).

4. Detachment of an officer from his ship or station does not of
 itself relieve him from duty as a member or judge advocate of the
 court. Specific orders for such relief are necessary.

5. (15) The court is authorized to adjourn over any holiday pre-
 scribed by article 330, U. S. Navy Regulations, 1920 (16).

(Signed) I—— H. G——,
Vice Admiral, U. S. Navy,
Commander Battleships, Battle Force,
U. S. Fleet.

A true copy (17). Attest:

C—— B. A——,
Captain U. S. Marine Corps,
Judge Advocate.

A (18)

(11) As to officers of the Naval Reserve, Coast Guard, etc., sitting as members, see
 sec. 347.

(12) For the selection and appointment of the judge advocate see sec. 350. One or
 more judge advocates may be appointed.

(13) Where a court is to be authorized to take up cases pending before another court,
 insert the following as paragraph 3 and renumber the succeeding paragraphs:

"3. This court is hereby authorized and directed to take up such cases, if any, as may
 be now pending before the general court-martial of which Captain B—— C, D——,
 U. S. Navy, is president, appointed by my precept of October 10, 19—, except such cases
 the trial of which may have been commenced."

(14) Omit this paragraph when 13 members have been appointed, and renumber the
 succeeding paragraphs accordingly.

(15) When applicable, the first sentence in par. 5 is "This employment on shore duty is
 required by the public interests."

(16) In case a new precept is issued to a court already in session add an additional
 paragraph "You will inform the members and the judge advocate that they will continue
 on court-martial duty under their previous orders."

(17) The original precept is never prefixed in a general court-martial record.

(18) For marking of documents see sec. 508. For order in which documents are pre-
 fixed or appended see sec. 507.

543. Same: Promotion or other change of status of a member or judge advocate.—

File ———.

NAVY DEPARTMENT,
BUREAU OF NAVIGATION,
Washington, D. C., October 26, 19—.

From: The Chief of the Bureau of Navigation.

To: Lieutenant Commander J—— K. L——, Medical Corps,
U. S. N.

Via: Commanding Officer, U. S. S. *Colorado* (19).

Subject: Commission regular (confirming ad interim commission).

Inclosures: (A) Commission.

(B) Form of acknowledgment.

1. The President of the United States, by and with the advice and consent of the Senate, having appointed you a surgeon in the Navy with the rank of lieutenant commander from the 3d day of June, 19—, I have the pleasure of transmitting herewith your commission, dated October 6, 19—.

2. Please acknowledge receipt.

(Signed) H. H. C——,
By direction.

A true copy. Attest:

C—— B. A——,
Captain, U. S. Marine Corps,
Judge Advocate.

B

544. Same: Appointment of a new member.—

UNITED STATES FLEET,
BATTLESHIPS, BATTLE FORCE,
U. S. S. WEST VIRGINIA, Flagship.

SAN PEDRO, CALIF.,
November 1, 19—.

From: Commander Battleships, Battle Force.

To: Captain A—— B. C——, U. S. Navy, President General
Court Martial, U. S. S. *Colorado*.

Subject: Appointment of member of court. (20)

(19) The member whose status is changed will show the original of this letter to the judge advocate that a copy may be made for the record.

(20) Modifications of the precept must not be confused with individual orders to the members. They must be signed by the convening authority (or his successor).

1. Lieutenant Commander U—— T. S——, U. S. Navy, is hereby appointed a member of the general court martial of which you are president convened by my precept of October 29, 19—. (21)

(Signed) I—— H. G——,
Vice Admiral, U. S. Navy,
Commander Battleships, Battle Force,
U. S. Fleet.

A true copy. Attest:

C—— B. A——,
Captain, U. S. Marine Corps,
Judge Advocate.

C

545. Same: Temporary appointment of a new member by dispatch.—
 To U. S. S. *Colorado*.

0206 President General Court Martial Period.

Captain C—— C—— Marine Corps temporarily appointed member general court martial convened by my precept twenty-nine October Nineteen—— during trial of X—— Y. Z—— seaman second class Navy I—— H. G—— vice admiral U. S. Navy Commander Battleships Battle Force U. S. Fleet 1545 (22).

A true copy. Attest:

C—— B. A——,
Captain, U. S. Marine Corps,
Judge Advocate.

D

546. Same: Temporarily relieving member.—
 File——.

UNITED STATES FLEET,
 BATTLESHIPS, BATTLE FORCE,
 U. S. S. WEST VIRGINIA, Flagship.

SAN PEDRO, CALIF.,
November 4, 19—.

From: Commander Battleships, Battle Force.

To: Captain A—— B. C——, U. S. Navy, President, General Court Martial, U. S. S. *Colorado*.

Subject: Temporary relief of member of court.

1. Commander G—— H. I——, Supply Corps, U. S. Navy, is hereby temporarily relieved as a member of the general court martial convened by my precept of October 29, 19—, during his

(21) *Variation*.—"upon the completion of trials already begun, and except in event of revision of cases already tried."

(22) Change by dispatch is explained in sec. 349. The form will be that prescribed for such dispatches except that in all cases affecting jurisdiction the dispatch shall be signed in full.

authorized leave of absence from November 6 to November 26, 19—, both dates inclusive.

(Signed) I—— H. G——.

*Vice Admiral, U. S. Navy,
Commander Battleships, Battle Force,
U. S. Fleet.*

A true copy. Attest:

C—— B. A——,

*Captain, U. S. Marine Corps,
Judge Advocate.*

E

547. Same: Relief of a member and appointment of another in his place.—

File——.

UNITED STATES FLEET,
BATTLESHIPS, BATTLE FORCE,
U. S. S. WEST VIRGINIA, Flagship.

SAN PEDRO, CALIF.,
November 5, 19—.

From: Commander Battleships, Battle Force.

To: Captain A—— B. C——, U. S. Navy, President, General Court Martial, U. S. S. *Colorado*.

Subject: Change in membership of court.

1. Commander D—— G. K——, U. S. Navy, is hereby appointed a member of the general court martial of which you are president, convened by my precept of October 29, 19—, vice Lieutenant Commander P—— Q. R——, U. S. Naval Reserve, hereby relieved. (23)

(Signed) I—— H. G——,

*Vice Admiral, U. S. Navy,
Commander Battleships, Battle Force,
U. S. Fleet.*

A true copy. Attest:

C—— B. A——,

*Captain, U. S. Marine Corps,
Judge Advocate.*

F

(23) Variation.—“, upon the completion of trials already begun, and except in event of revision of cases already tried.”

548. Letter detailing counsel to assist the judge advocate.—
File ———.

UNITED STATES FLEET,
BATTLESHIPS, BATTLE FORCE,
U. S. S. WEST VIRGINIA, Flagship.
SAN PEDRO, CALIF.,
November 2, 19—.

From: Commander Battleships, Battle Force.

To: Lieutenant B—— B. B——, U. S. Navy, U. S. S. *West Virginia*.

Subject: Orders as counsel to assist judge advocate.

1. You are hereby directed to report to the president of the general court martial ordered to convene on board the U. S. S. *Colorado*, as counsel to assist the judge advocate, during the trial of X—— Y. Z——, seaman second class, U. S. Navy.

I—— H. G—— (24),
Vice Admiral, U. S. Navy,
Commander Battleships, Battle Force,
U. S. Fleet. G

549. Letter from commanding officer of a member explaining his absence (25).—

File ———.

U. S. S. COLORADO,
SAN FRANCISCO, CALIF.,
November 10, 19—.

From: Commanding Officer.

To: Commander Battleships, Battle Force, U. S. Fleet.

Via: Captain A—— B. C——, U. S. Navy, President, General Court-Martial, U. S. S. *Colorado*.

Subject: Absence of Lieutenant Commander J—— K. L——, Medical Corps, U. S. Navy, from general court-martial session of November 9, 19—.

Reference: Naval Courts and Boards, section 376.

1. In accordance with reference, I have to report that Lieutenant Commander J—— K. L——, Medical Corps, U. S. Navy, was absent from the session of the general court martial of which he is a member on November 9, 19—, by reason of an order from

(24) The original may be prefixed to the record. If the counsel for the judge advocate acts in more than one case a copy must be prefixed in each case after the first. Counsel for the judge advocate can be detailed only by the convening authority (sec. 355). For privileges of such counsel, and reporting, see sec. 385.

(25) For absence of members see secs. 375 to 377.

me to attend to the case of ———, seaman, first class, U. S. Navy, injured on that date.

(Signed) ———.

A true copy. Attest:

C—— B. A——,

Captain, U. S. Marine Corps,

Judge Advocate.

H

550. Letter from attending medical officer reporting sickness of a member.—

File ———.

U. S. S. COLORADO,

SAN FRANCISCO, CALIF.,

November 10, 19—.

From: Lieutenant C—— F. I——, Medical Corps, U. S. Navy.

To: Commander Battleships, Battle Force, U. S. Fleet.

Via: Captain A—— B. C——, U. S. Navy, President, General Court Martial, U. S. S. *Colorado*.

Subject: Sickness of member of general court martial.

Reference: Naval Courts and Boards, section 377.

1. In accordance with reference, I have to report that on November 9, 19—, I found Lieutenant U—— V. W——, U. S. Navy, sick and unfit for duty (26).

(Signed.) C—— F. I——.

A true copy. Attest:

C—— B. A——,

Captain, U. S. Marine Corps,

Judge Advocate.

I

551. Charges and specifications—Order for trial.—

File ———.

UNITED STATES FLEET,

BATTLESHIPS, BATTLE FORCE,

U. S. S. WEST VIRGINIA, Flagship.

SAN DIEGO, CALIF.,

November 1, 19—.

From: Commander Battleships, Battle Force.

To: Captain C—— B. A——, U. S. Marine Corps, or Lieut.

(j. g.) F—— E. D——, U. S. Naval Reserve, Judge Advocate, General Court-Martial, U. S. S. *Colorado*.

Subject: Charges and specifications in the case of X—— Y. Z——, seaman second class, U. S. Navy.

(26) Variation.—"In accordance with reference, I have to report that on 9 November

19—, I found Lieutenant U—— V. W——, U. S. Navy, sick and unfit for duty. I estimate that his illness will continue for (a period of about —— days) (an indefinite period)."

1. The above-named man (27) will be tried before the general court martial of which you are judge advocate upon the following charge(s) and specification(s). You will notify the president of the court accordingly, inform the accused of the date set for his trial, and summon all witnesses, both for the prosecution and the defense.

CHARGE I

* * * * *

SPECIFICATION 1

* * * * *

etc. (28).

I—— H. G—— (29)
Vice Admiral, U. S. Navy,
Commander Battleships, Battle Force,
U. S. Fleet.
 (J) (1) (30)

552. Additional charge and specification (31).

File ——.

UNITED STATES FLEET,
 BATTLESHIPS, BATTLE FORCE,
 U. S. S. WEST VIRGINIA, Flagship.
 SAN PEDRO, CALIF.,
November 3, 19—.

From: Commander Battleships, Battle Force.

To: Captain C—— B. A——, U. S. Marine Corps, or Lieut.
 (j. g.) F—— E. D——, U. S. Naval Reserve, Judge Advocate,
 General Court Martial, U. S. S. *Colorado*.

Subject: Additional charge and specification in the case of X——
 Y. Z——, seaman second class, U. S. Navy.

1. The subject-named man will be tried before the general court martial of which you are judge advocate upon the following additional charge(s) and specification(s), intelligence of which did not reach me until November 2, 19—. You will notify the president of the court accordingly, inform the accused of the date set for his

(27) In case of trial in joinder this is "men", and the names of each are given under "subject."

(28) The charges and specifications follow the samples given in ch. II.

(29) The original of the charges and specifications is to be prefixed in each case.

(30) Subsequent pages numbered J (2), J (3), etc.

(31) For provision of law governing additional charges and specifications see 43d A. G. N.

trial, and summon all witnesses, both for the prosecution and the defense.

CHARGE

* * * * *

SPECIFICATION

* * * * *

I—— H. G——,
Vice Admiral, U. S. Navy,
Commander Battleships, Battle Force,
U. S. Fleet.
 K

553. Letter correcting charges and specifications.—

File——.

UNITED STATES FLEET,
 BATTLESHIPS, BATTLE FORCE,
 U. S. S. WEST VIRGINIA, Flagship.

SAN PEDRO, CALIF.,
 November 3, 19—.

From: Commander Battleships, Battle Force.

To: Captain C—— B. A——, U. S. Marine Corps, or Lieut.
 (j. g.) F—— E. D——, U. S. Naval Reserve, Judge Advocate,
 General Court Martial, U. S. S. *Colorado*.

Subject: Authorizing correction in specifications.

1. You are hereby authorized and directed to change the charge(s) and specification(s) preferred by me against X—— Y. Z——, seaman second class, U. S. Navy, in the following particulars: In the third line of the first specification of Charge I change the words “* * *” to “* * *”; in the third line of the specification of the additional charge make the same correction.

2. You will cause the copy for the accused to be corrected accordingly.

I—— H. G——,
Vice Admiral, U. S. Navy,
Commander Battleships, Battle Force,
U. S. Fleet.
 L

554. Letter authorizing nolle prosequi.—

File——.

UNITED STATES FLEET,
BATTLESHIPS, BATTLE FORCE,
U. S. S. WEST VIRGINIA, Flagship.

SAN PEDRO, CALIF.,
November 4, 19—.

From: Commander Battleships, Battle Force.

To: Captain C—— B. A——, U. S. Marine Corps, or Lieut.
(j. g.) F—— E. D——, U. S. Naval Reserve, Judge Advocate,
General Court Martial, U. S. S. *Colorado*.

Subject: Authorizing entry of nolle prosequi in case of X—— Y.
Z——, seaman second class, U. S. Navy.

1. You are hereby authorized and directed to enter a nolle prosequi in the case of subject-named man to specifications 1 and 2 of Charge II of the charges and specifications preferred against him November 1, 19—.

I—— H. G—— (32)
Vice Admiral, U. S. Navy,
Commander Battleships, Battle Force,
U. S. Fleet.
M

555. Dispatch from court reporting errors in charges and specifications.—

Combatships

West Virginia.

8504 Court in case of X—— Y Zenher seaman second class Navy has found charges and specifications not in due form in that last name is spelled quote Zehner unquote throughout period Request authority to change 1045.

A true copy. Attest:

C—— B. A——

Captain U. S. Marine Corps,
Judge Advocate.

N

556. Dispatch from convening authority correcting charges and specifications.—

U. S. S. *Colorado*, 0205 Judge Advocate General court martial period Correct charges and specifications preferred against

(32) Only the convening authority can direct a nolle prosequi.

X——— Y Zenher, seaman second class Navy and copy for accused by changing last name from quote Zehner unquote to quote Zenher unquote wherever it occurs I——— H. G——— vice admiral U. S. Navy commander battleships battle force United States Fleet 1145 O

557. Court meets.—

FIRST DAY (33).

U. S. S. COLORADO (34),
SAN FRANCISCO, CALIF.,
Friday, November 4, 19—.

The court met at 10 a. m. (35).

Present:

Captain A——— B. C———, U. S. Navy.

Commander D——— E. F———, U. S. Navy,

Commander G——— H. I———, Supply Corps, U. S. Navy,

Lieutenant Commander J——— K. L———, Medical Corps, U. S. Navy,

Major M——— N. O———, U. S. Marine Corps,

Lieutenant Commander U——— T. S———, U. S. Navy,

Lieutenant Commander P——— Q. R———, U. S. Naval Reserve Force,

Lieutenant U——— V. W———, U. S. Navy, members, and

Captain C——— B. A———, U. S. Marine Corps, judge advocate (36).

Coxswain Q——— R. S———, U. S. Navy, entered with the accused and reported as provost marshal (37).

The judge advocate introduced F——— E. D———, yeoman first class, U. S. Navy, as reporter (38).

558. Accused's counsel.—

The accused requested that Captain S——— T———, U. S. Marine Corps, act as his counsel. Captain T——— took seat as counsel for the accused (39).

(33) Where the trial occupies but one day, this entry is omitted.

(34) For place of meeting see sec. 360.

(35) For hours of sessions see sec. 367.

(36) For seating of members see sec. 369. See also art. 154 (3) of the regulations.

(37) For appointment and duties of provost marshal, guard, and orderlies see sec. 363. The presence of accused must be affirmatively shown except as set forth in sec. 341.

(38) For appointment of reporter see sec. 361. Reporting may be in shorthand.

(39) Variation 1.—"The accused stated that he did not wish counsel.

"The requirements of section 356, Naval Courts and Boards, were complied with."

Var. 2.—"The accused requested that Lieutenant L——— N———, U. S. Navy, act as his counsel. The accused was informed that his request to have Lieutenant N——— act as his counsel was not approved as Lieutenant N——— had been ordered to duty at the Navy Department and was on point of leaving in accordance with his orders. The ac-

559. Judge advocate's counsel.—

The judge advocate read an order from the convening authority, original prefix marked "G" (40), detailing Lieutenant B—— B. B——, U. S. Navy, to act as counsel to assist the judge advocate. Lieutenant B—— took seat as such (41).

560. Precept read.—

The judge advocate read the precept and modifications thereof, copies prefixed marked "A", "B", "C", and "D" (42).

561. Challenge by judge advocate (43).—

The judge advocate objected to Commander D—— E. F——, U. S. Navy, because he has personally investigated the charges and expressed a positive opinion that the accused is innocent (44).

The challenged member replied as follows:

* * * * *

Upon the request of the judge advocate the challenged member took the stand and was examined on his voir dire (45) as follows (46):

* * * * *

G—— K. S——, a witness for the judge advocate, was called, duly sworn and examined as follows:

* * * * * (47)

cused then requested that Captain O—— M——, U. S. Marine Corps, act as his counsel. Captain M—— took seat as such."

Var. 3.—"The accused requested that counsel be detailed for him.

"The senior officer present (or commandant) was requested by the court to detail an officer to act as such.

"The court then, at 10:15 a. m., took a recess till 10:32 a. m., when it reconvened.

"Present: All the members, the judge advocate, the reporter, and the accused.

"Lieutenant Commander S—— R. Q——, U. S. Navy, took seat as counsel for the accused."

The court can not refuse accused the right to have counsel.

For detalling counsel see sec. 357.

In case request for a certain person to act as counsel is refused, the reason for refusal must be set out.

For the rights and privileges of counsel for the accused see sec. 384.

(40) This is set forth in sec. 548.

(41) *Variation.*—"The judge advocate read a letter from the convening authority, copy prefixed marked 'A', authorizing Mr. A—— A. A——, of the Department of Justice, to act as counsel to assist the judge advocate. Mr. A—— took seat as such."

Counsel for the judge advocate, in order to have standing before the court, must be detailed by the convening authority.

For privileges of counsel for the judge advocate see sec. 385.

(42) See sections 386 and 542-547, inclusive.

This entry is to be used when the precept and modifications thereof are read aloud at the first session of the first trial by a newly convened court. Subsequent modifications will be read aloud in the court when received from the convening authority. (See sections 571, 572, and 590.) At the first sessions of succeeding trials the precept and modifications thereof previously read will be submitted to the accused for his information and inspection.

Variation 1.—"The judge advocate submitted the precept and modifications thereof, copies prefixed marked 'A', 'B', 'C', and 'D', to the accused for his information and inspection."

Variation 2.—"The judge advocate submitted the precept and modifications thereof,

The court was cleared. The challenged member withdrawing (48)

The court was opened. All parties to the trial entered; the court announced that the objection of the judge advocate was sustained and that Commander F—— was excused from sitting as a member in this case (49).

Commander F—— withdrew from his seat as a member.

The judge advocate did not object to any other member.

562. Challenge by accused (50).—

The accused (51) objected to Major M—— N. O——, U. S. Marine Corps, because he had sat as a member of a court martial which tried H—— L. T——, seaman first class, U. S. Navy, on charges growing out of the identical incident on which the charges in this case are based, and for which accused could properly have been tried in joinder with T——.

The challenged member replied as follows:

The statement of the accused is substantially correct.

The court announced that the challenge of the accused was sustained and that Major O—— was excused from sitting as a member in this case (52). Major O—— withdrew from his seat as a member.

The accused did not object to any other member.

563. Judge advocate, members, and reporter sworn.—

The judge advocate, each remaining (53) member, and the reporter were duly sworn (54).

564. Accused acknowledges receipt of a copy of the charges and specifications.—

The accused stated that he had received a copy of the charges and specifications preferred against him on November 1, 19— (55), and that on November 3, 19—, he received a copy of the additional charge and specification preferred against him (55a).

copies prefixed marked 'A', 'B', 'C', and 'D', to the accused for his information and inspection and read a modification, copy prefixed marked 'E'."

(43) If the judge advocate makes no challenge, no entry need be made. For challenges in general see secs. 387 to 393.

(44) For valid grounds of challenge see secs. 388 and 389.

(45) See appendix E.

(46) This examination is conducted the same as that of a witness for the prosecution.

(47) Witnesses may be called by both sides. For the procedure see sec. 391.

(48) The court decides on challenges with liberality according to the preponderance of the evidence.

(49) Variation.—" * * that the objection of the judge advocate was not sustained."

(50) If the accused does not challenge, the entry must appear: "The accused stated that he did not object to any member."

(51) Except in pleas to the issue, admissions, and the statement of the accused, the counsel for the accused may speak for the accused. The entry shall be made as though the accused himself were speaking.

(52) For when clearing the court may be dispensed with, see sec. 373.

(53) The word "remaining" is omitted if there have been no challenges sustained.

(54) See art. 40 A. G. N. The judge advocate swears the reporter (and interpreter).

This completes the organization.

(55) For the manner in which the copy is sent the accused see sec. 364. If accused denies having received a copy of the charges and specifications, the fact that he did receive them, or refused them when offered, must be proved.

In such case the judge advocate will call witnesses or will himself take the stand and shall prove the receipt or offer by a preponderance of the evidence. The accused may call witnesses to disprove this. Upon the conclusion of the evidence the court shall be cleared, and upon reopening the finding shall be announced and recorded: "The court finds as a fact that the accused received a copy of the charges and specifications on November 1, 19—" (or "* * * that the accused was duly offered and refused a copy of the charges and specifications on November 1, 19—.") If the finding be to the

(55a) Omitted where no additional charge or specification has been preferred.

565. Changes in charges and specifications announced.—

The judge advocate read a letter from the convening authority, prefix marked "L" (56), authorizing and directing him to make a change in the specifications, and stated that the same had been made both in the original and in the copy in the possession of the accused (57).

566. Nolle prosequi announced.—

The judge advocate read a letter from the convening authority, prefixed marked "M" (58), directing him to enter a nolle prosequi as to specifications 1 and 2 of Charge II of the charges and specifications preferred against the accused on November 1, 19—. A nolle prosequi was so entered (59).

567. Charges and specifications examined (60).—

The judge advocate asked the accused if he had any objection to make to the charges and specifications.

The accused replied in the affirmative, stating that in the specifications he is charged by the name of X—— Y. Zehner, whereas he is now and from earliest childhood has been known by the name of X—— Y. Zenher, and this he is ready to verify (61).

The judge advocate called attention to the fact that the word "———" in the fifth line of specification 1 of Charge I and the word "———" in the third line of the specification of the additional charge were misspelled.

The court was cleared (62).

The court was opened and all parties to the trial entered. The court directed the judge advocate to correct the manifest clerical errors in spelling pointed out by him both in the original charges and specifications and in the copy in the hands of the accused. The court announced that it, having found the charges and specifications otherwise not in due form and technically correct, directed the judge advocate to send a communication to the convening authority, copy prefixed marked "N" (63), and would await a reply (64).

contrary the court must see that the accused is furnished a copy and must adjourn from day to day (or by permission of the convening authority for a longer period) till the accused has had ample time to prepare his defense.

(56) Set forth in sec. 553.

(57) For the responsibility of the judge advocate in this see sec. 16.

(58) Set forth in sec. 554.

(59) For definition of "nolle pros" see sec. 18. The court can not direct a nolle pros.

(60) See sec. 398 for discussion of this duty.

(61) Variation: "The accused replied in the negative."

(62) When there have been no objections this may be dispensed with under the provisions of sec. 373. The judge advocate is not to be present in closed court.

(63) This is set forth in sec. 555.

(64) For errors in charges and specifications see sec. 15.

Variation.—"The court was opened and all parties to the trial entered. The court announced that the objection of the accused was overruled, and that the court found the charges and specifications in due form and technically correct."

568. Adjournment.—

The court then adjourned until 10 a. m., tomorrow, November 5, 19— (65).

569. Second day.—**SECOND DAY.**

U. S. S. COLORADO,
SAN FRANCISCO, CALIF.,
Saturday, November 5, 19—.

The court met at 10 a. m.

Present:

Captain A—— B. C——, U. S. Navy,
Commander G—— H. I——, Supply Corps, U. S. Navy,
Lieutenant Commander J—— K. L——, Medical Corps,
U. S. Navy,
Lieutenant Commander U—— T. S——, U. S. Navy,
Lieutenant Commander P—— Q. R——, U. S. Naval Reserve
Force,
Lieutenant U—— V. W——, U. S. Navy, members and
Captain C—— B. A——, U. S. Marine Corps, judge advocate.
F—— E. D——, yeoman first class, U. S. Navy, reporter.

The accused.

The accused stated that he waived his right to have counsel present during this session of the court (66).

The record of proceedings of the first day of the trial was read and approved (67).

No answer from the convening authority having been received to the communication, copy prefixed marked "N", the court then adjourned until 10 a. m., Monday, November 7, 19—.

(65) *Variation.*—"The court then took a recess until 2 p. m., the same date, when it reconvened. Present: The members and all parties to the trial."

When the suspension of business is from one day to the next, or for a longer period, it should be recorded as an adjournment; when from one part of a day to another part of the same day, as a recess.

(66) When counsel for the accused is absent the record shall show affirmatively that accused waived his right to have counsel present.

(67) For reading of record see sec. 506. If objected to see sec. 608.

Variation: "The judge advocate stated that the record of proceedings of the first day of the trial was not ready. At the request of the judge advocate, the court then, at — a. m., took a recess until — p. m., at which time it reconvened." (*Or*, "The court decided to postpone the reading of this record until such time as it shall be reported ready, and in the meantime to proceed with the trial.")

570. Third day.—**THIRD DAY.**

U. S. S. COLORADO,
SAN FRANCISCO, CALIF.,
Monday, November 7, 19—.

The court met at 10 a. m.

Present:

Captain A—— B. C——, U. S. Navy,

Lieutenant Commander J—— K. L——, Medical Corps, U. S.

Navy,

Lieutenant Commander U—— T. S——, U. S. Navy,

Lieutenant Commander P—— Q. R——, U. S. Naval Reserve

Force,

Captain C—— C——, U. S. Marine Corps,

Lieutenant U—— V. W——, U. S. Navy, members, and

Captain C—— B. A——, U. S. Marine Corps, judge advocate,
and his counsel.

F—— E. D——, yeoman first class, U. S. Navy, reporter.

Accused and his counsel.

571. New member seated (before evidence has been received) (68).—

The judge advocate read a despatch from the convening authority, copy prefixed marked "D" (69), appointing Captain C—— C——, U. S. Marine Corps, as a member of the court.

The accused stated that he did not object to this member (70).

Captain C—— C——, U. S. Marine Corps, was duly sworn.

572. Member relieved.

The judge advocate read a letter from the convening authority, copy prefixed marked "E" (71), accounting for the absence of Commander G—— H. I——, Supply Corps, U. S. Navy.

The record of proceedings of the second day of the trial was read and approved (72).

573. Charges and specifications corrected.—

The judge advocate read a dispatch from the convening authority, prefixed marked "O" (73), directing changes in the charges and specifications. The judge advocate was directed by the court to correct the original charges and specifications and the copy in the

(68) When a new member is seated after evidence has been received see sec. 590.

(69) Set forth in sec. 545.

(70) Should either the judge advocate or the accused object, proceed as under "Challenge", secs. 561 and 562.

(71) Set forth in sec. 546.

(72) If objected to see sec. 608.

(73) Set forth in sec. 556.

hands of the accused in accordance with the directions of the convening authority (74).

574. Corrected charges and specifications examined.—

The judge advocate asked the accused if he had any objection to make to the charges and specifications as corrected.

The accused replied in the negative (75).

The court was cleared.

The court was opened. All parties to the trial entered and the court announced that it found the charges and specifications in due form and technically correct (76).

575. Accused asked if he is ready for trial.—

The accused stated that he was ready for trial (77).

576. Witnesses separated.—

No witnesses not otherwise connected with the trial were present (78).

577. Plea in bar of trial made.—

The accused made a plea in bar of trial to the first specification of the first charge on the ground that he had been previously tried and acquitted of this same offense by a civil court (79).

(74) In case the convening authority declines to direct a change in the charges and specifications:

Variation.—"The judge advocate read a letter from the convening authority, prefixed marked '_____', stating that in his opinion the charges and specifications were correct as drawn, and directing the court to reconsider its finding thereon." (The letter should state fully the reasons for believing the charges and specifications in due form.) The court may not properly arraign the accused and proceed to a finding on any charge or specification until it has found the said charge or specification to be in due form and technically correct and this fact has been noted in the proceedings; accordingly, if the court adheres to its previous finding, the convening authority cannot direct it to proceed with the trial (sec. 474), but he should reframe the charge or specification, or he may refer the case to another court or direct the judge advocate to enter a nolle prosequi to the charge or specification in controversy.

(75) In case of further objection proceed as under sec. 567.

(76) See sec. 398 for discussion of this duty.

(77) *Variation.*—"The judge advocate (accused) requested a postponement of the trial. (*State reason.*)

The court was cleared. The court was opened, and all parties to the trial entered.

"The court then at — a. m., adjourned until — a. m., tomorrow, Friday." (*Or.* "The court was opened. All parties to the trial entered, and the president announced that the court had decided to proceed with the trial.")

(For postponement see sec. 399.)

(78) Witnesses shall be examined apart from each other. It is improper for witnesses, unless they are otherwise connected with the trial, to hear the charges and specifications read. For procedure in case it is desired to exclude certain classes from the court see sec. 368.

Variation 1.—"In accordance with the direction of the court, all witnesses not otherwise connected with the trial withdrew."

Var. 2.—"The court summoned all the witnesses in the case and instructed them not to converse with any person, other than parties to the trial, concerning any feature of the case whatsoever, and not to allow any witness who has testified to communicate in any manner anything to them concerning testimony given on the stand."

(For warning to witnesses see sec. 297.)

(79) For special pleas see secs. 404 to 410.

In support of his plea the accused desired to call a witness (80).

A witness in behalf of the accused entered and was duly sworn (81).

(Testimony is taken in the manner given in sec. 597. The judge advocate may call witnesses to disprove the accused's contention) (82).

The accused made an argument in support of his plea, a brief of which is appended, marked "P" (83).

The judge advocate replied (84).

The court was cleared.

The court was opened, and all parties to the trial entered. The court announced that the plea of the accused was overruled (85).

The judge advocate asked the accused if he had any further plea to offer (86).

The accused replied in the negative.

578. Charges and specifications read and accused arraigned.—

The judge advocate read the letters containing the charges and specifications (87), original prefixed marked "J (1)", "J (2)", "J (3)", "J (4)", "J (5)", and "K" (88), and arraigned the accused as follows (89):

(80) *Variation*.—"The accused stated that he had no evidence to introduce in support of his plea."

(81) The oath is the same as for a witness on the general issues.

(82) The evidence shall be fully recorded.

(83) Oral arguments upon interlocutory proceedings are not recorded. The brief must be prepared by the counsel.

The precept and the charges and specifications and all papers relating to them are prefixed; other papers are appended.

(84) *Variation 1*.—"The judge advocate did not desire to reply."

Var. 2.—"The judge advocate requested until — p. m., in order to prepare his reply.

"The court then took a recess until — p. m., at which time it reconvened.

(Or, "The court denied the request of the judge advocate and directed him to reply at this time. The judge advocate replied.")

"Present: The members and all parties to the trial.

"The judge advocate read an argument in reply to the plea of the accused, copy appended, marked '—.'"

(85) *Variation*.—"The court announced that the plea of the accused was sustained. The judge advocate was directed to address a communication to the convening authority, copy appended marked '—,' transmitting a summary of the proceedings of the court relative to the plea.

"Pending a reply from the convening authority, the court then, at — p. m., adjourned until 10 a. m., tomorrow."

(86) If further plea is offered proceed the same as before.

(87) For the manner of arraignment see sec. 411. For arraignment in trials in joinder see sec. 403.

(88) Set forth in secs. 551 and 552.

(89) *Variation*.—"The judge advocate read the letter containing the charge and specifications, original prefixed marked 'J', and arraigned the accused as follows: * * *."

Q. X——— Y. Z———, seaman second class, U. S. Navy, you have heard the charges and specifications preferred against you; how say you to the first specification of the first charge, guilty or not guilty?

579. Pleas to the issues (90).—

A. Not guilty.

Q. To the second specification of the first charge, guilty or not guilty?

A. Guilty.

Q. To the first charge, guilty or not guilty?

A. Guilty.

Q. To the third (91) specification of the second charge, guilty or not guilty?

A. Not guilty.

Q. To the second charge, guilty or not guilty?

A. Not guilty.

* * * * *

Q. To the specification of the additional charge, guilty or not guilty?

A. Guilty, except to the words “* * *.”

Q. To the additional charge, guilty or not guilty?

A. Guilty.

580. Warning on pleas.—

The accused was duly warned as to the effect of his pleas (92).

The accused persisted in his pleas (93).

(90) For detailed explanation of these pleas see secs. 411 to 417.

For procedure in case of change of plea see secs. 580 and 596.

(91) Specifications 1 and 2 of this charge having been nolle prosequed.

(92) For procedure on plea of guilty see sec. 414.

The warning must be given whenever the accused has pleaded guilty to any specification or part of a specification.

Example of proper warning by the president (in case of an enlisted man):

“Z———, it is my duty as president of this court to warn you that by your plea of guilty to the second specification of Charge I and to Charge I and of guilty except as to the words ‘* * *’ to the specification of the additional charge, and of guilty to the additional charge, you deprive yourself of the benefits of a regular defense as to these specifications, parts of specifications, and charges thus admitted. That is to say, you can not after such a plea of guilty go ahead and prove that you are not guilty on these specifications and charges. You may, however, introduce evidence of mitigating circumstances, in extenuation, or of previous good character. Do you understand what I have just explained? (In case of a negative answer the explanation must be amplified.) Understanding this, do you persist in your plea?”

(93) Variation.—“The accused withdrew his plea to the specification of the additional charge and to the additional charge and substituted a plea of not guilty. He persisted in his other pleas.”

581. Action on pleas (94).—

The court was cleared.

The court was opened, and all parties to the trial entered. The court announced that the pleas of the accused to the specification of the additional charge and to the additional charge were rejected, and that the trial would proceed as if pleas of not guilty had been entered thereto (95).

582. Admission in open court.—

The counsel for the accused stated that the accused admitted that he was X—— Y. Z——, seaman second class, U. S. Navy, and that he was on the —d, —th, and —th of October 19—, attached to and serving on board U. S. S. *Colorado*.

The accused stated that this admission was made by his authority (96).

583. Prosecution begins.—

The prosecution began (97).

584. Member called as a witness.—

A member (98) was called as a witness for the prosecution and was duly sworn (99).

Examined by the judge advocate (1).

1. Q. State your name, rank, and present station.

A. U—— T. S——, lieutenant commander, U. S. Navy, U. S. S. *Colorado*.

2. Q. If you recognize the accused, state as whom.

A. * * *.

* * * * * (2)

(Upon completion of examination (3)).

(94) Action on pleas need only to be taken when in the discretion of the court it is advisable.

(95) For rejection of plea see sec. 417.

(96) For admission in open court see sec. 183.

When the admission is made by counsel it must appear affirmatively on the record that the accused acquiesced in the admission.

(97) *Variation*.—"The prosecution offered no evidence."

The prosecution properly offers no evidence only where the accused has plead guilty throughout, and the specifications set forth the facts so fully as to show all the circumstances of aggravation.

For the duty of the judge advocate to offer evidence after a plea of guilty see sec. 166.

For the order of introduction of evidence see sec. 266.

(98) *Variation*.—"The judge advocate * * *."

(99) Witnesses are sworn by the president. See art. 41 A. G. N.

For a member or judge advocate as a witness see sec. 237.

(1) For the order of examining witnesses see sec. 272. For direct examination see secs. 273 to 279.

(2) The examination is the same as for any other witness for the prosecution.

(3) The examination is completed in the same way as for any other witness (see section 587), except that a member is not warned (section 297).

The court announced that Lieutenant Commander U—— T. S——, was excused from sitting as a member in this case. Lieutenant Commander S—— withdrew from his seat as a member (4).

585. Examination of witness for prosecution.—

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate.

1. Q. State your name, rate, and present station (5).

A. R—— Q——, coxswain, U. S. S. *Colorado*.

2. Q. If you recognize the accused state as whom.

A. * * *.

* * * * *

14. Q. * * *.

This question was objected to by the accused on the ground that it was leading (6).

The judge advocate replied (7).

The court was cleared. The court was opened. All parties to the trial entered, and the court announced that the objection was sustained (8).

15. Q. * * *

A. * * *.

* * * * *

23. Q. * * *.

This question was objected to by the court on the ground that it was irrelevant (9).

The judge advocate replied.

The court announced that the objection was sustained (10).

24. Q. * * *.

A. * * *.

The accused moved to strike out this answer on the ground that it was hearsay (11).

The judge advocate replied.

(4) Testifying on any matter of fact material to the issues, *ipso facto*, challenges a member.

For the duty of a member who has reason to believe he will be called as a witness see sec. 392.

Variation.—“The accused stated that he wished Lieutenant Commander S—— not to be considered challenged.

“Lieutenant Commander S—— resumed his seat as a member.”

(5) Questions are to be numbered consecutively. If, however, the first examination of a witness is completed and later he is recalled, the questions begin anew. Questions and answers are paragraphed.

(6) For objections to questions or testimony see sec. 271. For leading questions see sec. 275.

(7) Oral arguments upon admissibility of evidence are not to be recorded. (See sec. 418.)

(8) For closing the court see sec. 373.

(9) For relevance of evidence see secs. 160 and 161.

(10) Sec. 373.

(11) For hearsay see secs. 168 et seq.

The president directed that the answer be stricken out. A member moved that the court be cleared. The court was cleared. The court was opened. All parties to the trial entered, and the court announced that the president's ruling was revoked, and that the court did not sustain the motion to strike out the answer (12).

25. Q. * * *.

This question was objected to by a member on the ground that it was double (13).

The judge advocate made no reply.

The court was cleared. The court was opened. All parties to the trial entered, and the court announced that the objection was not sustained (14).

The question was repeated.

A. * * *.

26. Q. * * *.

A. * * *.

* * * * *

Cross-examined by the accused (15).

35. Q. * * *

A. * * *

* * * * *

40. Q. * * *

This question was objected to by the judge advocate on the ground that it was beyond the scope of the direct examination (16).

The accused replied.

The court was cleared. The court was opened. All parties to the trial entered, and the court announced that the objection was sustained.

41. Q. * * *

A. * * *

42. Q. * * *

This question was objected to by the judge advocate on the ground that it called for the opinion of the witness (17).

The accused withdrew the question.

43. Q. * * *

A. * * *

* * * * *

(12) Sec. 373. When the president speaks for the court the ruling is recorded as by the court. When it develops that he did not speak for the court the ruling is recorded as by the president.

(13) For double questions see sec. 278.

(14) When it develops that a member's objection is not that of the court, the objection is recorded as by a member.

(15) For cross-examination see secs. 282 to 285.

(16) Sec. 282.

(17) For opinion evidence see secs. 224 to 230.

The witness was duly warned (18).

586. Recess.—

The court then, at 11.45 a. m., took a recess until 1 p. m., at which time it reconvened (19).

Present: All the members, the judge advocate and his counsel, the reporter, the accused and his counsel.

No witnesses not otherwise connected with the trial were present

587. Examination of witness for prosecution continued.—

R——— Q———, the witness under examination when the recess was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony.

(Cross-examination continued.)

66. Q. * * *

A. * * *

* * * * *

Reexamined by the judge advocate (20):

71. Q. * * *

A. * * *

* * * * *

Recross-examined by the accused:

81. Q. * * *

A. * * *

* * * * *

Examined by the court (21):

91. Q. * * *

A. * * *

By a member:

92. Q. * * *

This question was objected to by the judge advocate on the ground that it went beyond the scope of the direct examination and that if answered the court would be originating evidence (22).

The member withdrew the question.

93. Q. * * *

A. * * *

The accused moved to strike the words “* * *” out of the answer on the ground that they were the mere opinion of the witness.

(18) This is given in view of the recess (next section) decided upon by the court. For warning to witnesses see sec. 297.

(19) When the suspension of business is from one part of a day to another part of the same day it should be recorded as a recess; when from one day to another, as an adjournment.

(20) For redirect and recross-examination see sec. 286.

(21) For examination by the court see sec. 287.

(22) Sec. 287.

The court directed that the words be stricken out (22a).

94. Q. * * *

A. * * *

The accused requested that the judge advocate make a minute in the record at this point that the witness answered in a confused and hesitant manner.

The judge advocate replied that he would comply with the request (23).

* * * * *

Neither the judge advocate, the accused, nor the court desired further to examine this witness (24).

The witness said that he had nothing further to state (25).

The witness was duly warned and withdrew (26).

588. View by the court.—

The court asked the parties if either objected to the court taking a view of compartment A-108 of the U. S. S. *Colorado*.

Neither the judge advocate nor the accused objected to the court taking this view (27).

The court, accompanied by the judge advocate, the accused, and counsel, proceeded to compartment A-108 of the U. S. S. *Colorado* (28).

Upon completion of the view the court returned to its regular place of meeting.

(22a) For striking matter from record, see sec. 516.

(23) In case of disagreement the court, of course, decides.

(24) After examination by the court opportunity is to be accorded the parties further to examine the witness.

(25) When all parties indicate that they have no more questions to ask, the court will inform the witness that he took an oath to state everything within his knowledge in relation to the charges, and that he is now privileged to make any further statement necessary to fulfill his oath; that if he is not sure what the charges are they will be explained to him.

Variation.—“The witness made the following statement: * * *”

After this statement, if any, further examination will be allowed in the discretion of the court.

(26) For warning to witnesses, see sec. 297.

Variations.—“The accused (judge advocate) (a member) requested that the witness verify his testimony.

“The witness verified his testimony, was duly warned, and withdrew.” (or) “The witness corrected his testimony as follows: Page —, answer to question No. —, the words ‘* * *’ changed to ‘* * *.’ The testimony, thus amended, was read. The witness pronounced it correct, was duly warned, and withdrew.” (or) “At the request of the judge advocate the witness was directed to report tomorrow at — o’clock — m. (later in the trial when recalled), to correct or verify his testimony, was duly warned, and withdrew.”

For verification of testimony see sec. 295.

For manner of correcting testimony see sec. 296.

(27) If objection is made, the court may, upon evidence introduced in a collateral proceeding, proving that the scene is in the same condition as when the alleged offense was committed, overrule the objection. For taking a view and the object thereof see sec. 366.

(28) No evidence is to be taken while taking a view.

The judge advocate stated that O—— P——, a material witness, had not appeared and requested the court to adjourn till to-morrow (29).

The court then, at 3.15 p. m., adjourned until 10 a. m., to-morrow, Tuesday, November 8 (30).

589. Fourth day.—

FOURTH DAY.

U. S. S. COLORADO,
SAN FRANCISCO, CALIF.,
Tuesday, November 8, 19—.

The court met at 10 a. m.

Present:

Captain A—— B. C——, U. S. Navy,

Commander D—— G. K——, U. S. Navy,

Lieutenant Commander J—— K. L——, Medical Corps, U. S. Navy.

Captain C—— C——, U. S. Marine Corps,

Lieutenant U—— V. W——, U. S. Navy, members, and

Captain C—— B. A——, U. S. Marine Corps, judge advocate, and his counsel.

F—— E. D——, yeoman first class, U. S. Navy, reporter.

The accused and his counsel.

590. New member seated (after evidence has been received) (31).

The judge advocate read an order from the convening authority, copy prefixed marked "F" (32) relieving Lieutenant Commander P—— Q. R——, U. S. Naval Reserve, and appointing Commander D—— G. K——, U. S. Navy, as a member of the court.

The judge advocate and the accused stated that they did not object to this member (33).

Commander D—— G. K——, U. S. Navy, was duly sworn (34).

The record of proceedings of the third day of the trial was read and approved (35).

No witnesses not otherwise connected with the trial were present.

(29) For postponement see sec. 399.

(30) For recess or adjournment, see secs. 568 and 586.

(31) For seating a new member before evidence has been received see sec. 571.

(32) Set forth in sec. 547.

(33) Should either the judge advocate or the accused object, proceed as under "challenge", secs. 561 and 562.

Should the court still have a legal quorum without the newly appointed member or without any member who has been absent from any legal cause after testimony has been taken, the procedure may be as follows:

Variation.—"The court excused Commander K—— from further attendance in the case now pending."

(34) For oath see appendix E.

(35) If objected to see sec. 608.

Each witness who had been examined during the absence of Commander K—— was separately called before the court, informed that his oath previously taken was still binding, heard his own testimony read, and Commander K—— not desiring to question him, he pronounced his testimony correct and withdrew (36).

591. Examination of witness for prosecution continued.—

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name, residence, and occupation (37).

A. O—— P——, * * *

2. Q. If you recognize the accused, state as whom.

A. * * *

* * * * *

592. Civilian witness in contempt.—

5. Q. * * *

The witness declined to answer on the ground that it might tend to degrade him (38).

The judge advocate requested the court to direct the witness to answer (39).

The court was cleared. The court was opened and all parties to the trial entered. The court announced that the witness must (40) answer the question.

The witness persisted in his refusal to answer the question.

The witness having been duly tendered (41) his fee and mileage, was cautioned by the court that his refusal, if persisted in, would make him amenable to punishment under section 12 of the act of February 16, 1909 (42); that is, a fine of not more than \$500 or imprisonment not to exceed six months or both.

The question was again put to the witness.

5. Q. * * *

(36) Should Commander K—— wish to examine the witness, or should any of the parties to the trial wish to question him on any correction he may have made in his testimony, proceed as if he were a new witness about to be examined, and begin numbering questions anew.

For verifying testimony see sec. 609.

For numbering of questions see sec. 504.

For procedure on seating new member see sec. 380.

For provisions of law relating to a member absent from the court being allowed to resume his seat see art. 47, A. G. N.

(37) This witness being a civilian. In case witness is a child, age should also be asked.

(38) For degrading and criminating questions see sec. 261.

For privilege and claiming of privilege see secs. 263 and 264.

(39) For request that witness be required to answer see sec. 265.

(40) Or, "need not."

(41) Or, "paid."

(42) This is set forth in art. 42, A. G. N.

The witness again declined to answer the question, and gave as the reason for his refusal that * * * (43).

The court was cleared. The court was opened and all parties to the trial and the witness in contempt entered. The court announced that the facts of the refusal of the witness to testify would, by order of the court, be certified to the district attorney for the necessary action in the premises as required by law. A copy of the said certificate is appended marked "Q."

6. Q. * * *

A. * * *

* * * * *

(Witness examined as in secs. 585 and 587.)

Neither the judge advocate, the accused, nor the court desired further to examine this witness.

The witness said that he had nothing further to state.

The witness was directed to return the next day to verify his testimony, was duly warned, and was permitted to withdraw (44).

593. Witness for prosecution called and objected to.—

A witness for the prosecution entered and was objected to by the accused on the ground * * * (45).

The witness was examined on this *voir dire* as follows (46):

Examined by the accused:

1. Q. * * *

A. * * *

* * * * *

(Witness examined as in sec. 597.)

The court sustained the objection and the witness was excused (47).

594. Witness introduces documentary evidence.—

The judge advocate was called as a witness for the prosecution and was duly sworn (48).

Examined by the judge advocate:

1. Q. State your name, rank, and present station.

A. C.—— B. A.——, captain, U. S. Marine Corps, judge advocate of this court.

2. Q. If you recognize the accused state as whom.

(43) Variation.—“* * * giving no reason.”

When a reason is given it shall be set out in the record with precision. For procedure when a witness is charged with contempt see sec. 292.

(44) The court does not have authority to restrain such witness of his liberty.

(45) For evidence incompetent on account of character or circumstances of the parties see secs. 233 to 243.

For objections to witness see sec. 270.

(46) For oath on *voir dire* see app. E.

(47) Variation.—“The court was cleared, etc., * * *. The court announced that the objection was overruled.” “The witness was duly sworn.”

(48) For a member or judge advocate as a witness see sec. 287.

A. * * *

3. Q. Are you the legal custodian of the proceedings of the court of inquiry convened by the Commander Battleships, Battle Force, United States Fleet, on board the U. S. S. *New York* at San Pedro, Calif., to inquire into the * * *. If so, produce it?

A. I am; here it is.

4. Q. Are the proceedings duly authenticated by the signature of the president of the court and of the judge advocate?

A. They are.

5. Q. What parts of these proceedings do you desire to introduce into evidence?

A. So much thereof as contains the testimony of ———, lieutenant commander, U. S. Navy, and of ———, boatswain's mate first class, U. S. Navy.

6. Q. Can not testimony of these witnesses be obtained?

A. It can not. I have sent summonses for these witnesses to the convening authority, and his reply, which I have here, states that they can not appear before this court.

The reply of the convening authority is appended marked "R."

The proceedings of the court of inquiry were submitted to the accused and to the court, and by the judge advocate so much thereof as contains the testimony of the before-named witness was offered in evidence (49).

There being no objection, it was so received (50).

7. Q. Refer to those documents (51) and read such portions thereof as relate to the offense for which the accused is now on trial.

The witness read from the testimony of Lieutenant Commander ——— (49); from the testimony of ———, boatswain's mate first class (49), (52).

(49) For the introduction of former testimony see sec. 223.

(50) Should there be objection, argument is allowed as on any other objection to evidence.

(51) Each witness' testimony, each exhibit, etc., in the proceedings of a court of inquiry is a separate document.

(52) In case the witness is not the legal custodian:

Variation 1.—

"Q. I show you a book; can you identify it?

"A. I can; it is the official log book of U. S. S. ———." Etc.

Var. 2.—

"Q. I show you a letter; can you identify it?

"A. I can.

"Q. In whose handwriting is it?

"A. In that of ———." Etc.

In case of 2 official copy under seal (sec. 196):

Var. 3.—"The judge advocate produced a copy of a document (letter) (order) under seal of the Navy Department, the original of which, he informed the court, could not be produced, as it was lost (part of a permanent record) (on official file, etc.), and submitted it to the accused and the court, and offered it in evidence" Etc.

Cross-examined by the accused:

8. Q. Read from the testimony of Lieutenant Commander _____ before the court of inquiry, questions and answers numbered 92 to 143, inclusive.

The witness read from the testimony of Lieutenant Commander _____ (49).

The accused asked if, in order to avoid having to recall this witness as a witness for the defense, he might have him introduce a deposition for the defense (53).

There being no objection, the request of the accused was granted. Examined by the accused:

9. Q. If you are the legal custodian of deposition of one _____, a witness for the defense, produce it (54).

The witness produced the deposition of _____, and it was submitted to the judge advocate and to the court and by the accused offered in evidence. There being no objection, it was so received, and is appended marked "Exhibit 4." The judge advocate read the deposition (55).

Neither the judge advocate, the accused, nor the court desired further to examine this witness; the witness resumed his seat as judge advocate (56).

595. Prosecution rests.—

The prosecution rested (57).

596. Defense begins.—

The defense began (58).

(53) The court may, in its discretion, allow the introduction of evidence out of regular order.

(54) For deposition see secs. 211 to 216.

(55) For the introduction of a deposition into evidence see sec. 215.

(56) The judge advocate, a member, or the accused is not warned after testifying.

(57) This entry is omitted when the prosecution has offered no evidence.

(58) Variation.—"The defense offered no evidence."

Change of plea.—When a change of plea is made as allowed by sec. 416 the following is the procedure:

"The accused informed the court that he desired to change his plea of not guilty to the _____ specification of the _____ charge to guilty.

"The accused was duly warned as to the effect of such plea and persisted therein.

"The judge advocate stated that he had no objection to the request of the accused being granted (or, the judge advocate objected to granting the request of the accused on the ground that * * *).

"The court was cleared. The court was opened and all parties to the trial entered. The court announced that the request of the accused was (or, was not) granted.

"The judge advocate reread the _____ specification of the _____ charge and rearraigned the accused as follows:

"Q. X—Y. Z—, seaman, second class, U. S. Navy, you have heard the _____ specification of the _____ charge preferred against you; how say you to this specification, guilty or not guilty?

"A. Guilty."

537. Examination of witness for defense.—

A witness for the defense entered and was duly sworn.

Examined by the judge advocate (59):

1. Q. State your name, rank, and present station.

A. M—— N——, ensign, U. S. Navy, U. S. S. *Colorado*.

2. Q. If you recognize the accused, state as whom.

A. * * *

Examined by the accused (60).

3. Q. * * *

A. * * *

* * * * *

598. Use of memoranda.—

15. Q. * * *

The witness requested permission to refresh his memory from a memorandum made at the time (61).

The judge advocate requested permission to cross-examine the witness as to the memorandum. The permission was granted.

Cross-examined by the judge advocate.

16. Q. Under what circumstances was this memorandum made?

A. * * *

17. Q. * * *

A. * * *

The judge advocate stated that he had no objection to the witness inspecting the memorandum.

The request of the witness was granted. Having inspected the memorandum the witness was asked if he could now testify of his own knowledge.

The witness replied in the affirmative (62).

18. Q. (15. Q. repeated.)

A. * * *

* * * * *

(59) The judge advocate asks the introductory questions of all witnesses.

(60) For the order for examining witnesses see sec. 272.

(61) *Variation.*—The witness stated that he could not remember the facts, but that he had made a memorandum at the time of the occurrence which correctly set forth the facts. The accused requested that the memorandum be received in evidence, and submitted same to the judge advocate and the court.

"Cross-examined by the judge advocate:

"Q. Under what circumstances was this memorandum made?

"A. * * *

"Q. Can you testify that it was correct when made?

"A. * * *

"There being no objection, the memorandum was received in evidence, copy appended marked 'Exhibit —', and the witness read same."

For memoranda in evidence see sec. 207.

For supplementing recollection see sec. 281.

(62) For refreshing recollection see sec. 280.

Cross-examined by the judge advocate.

26. Q. * * *

A. * * *

* * * * *

The accused did not desire to reexamine this witness (63).

The court did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

599. Naval witness in contempt.—

A witness for the defense entered and was duly sworn.

Examined by the judge advocate.

1. Q. State your name, rate, and present station.

A. K—— L——, seaman second class, U. S. Navy, U. S. S. Colorado.

2. Q. If you recognize the accused, state as whom.

A. * * *.

* * * * *

5. Q. * * *.

A. * * *.

The court cautioned the witness as to his language (64).

The witness, having persisted in the use of improper language (65), was charged with contempt, and, upon being given opportunity to reply, replied “* * * *” (66).

The court was cleared. The court was opened, and all parties to the trial and the witness in contempt entered. The court announced that it deemed the witness K—— L——, seaman second class, U. S. Navy, guilty of contempt of court in that he * * * (67).

The court informed the witness that he was at liberty, by such proper statement as he might desire to make, to show cause why he should not be punished for contempt.

The witness stated * * *.

The witness was placed in the custody of the provost marshal (68) and the court was cleared. The court was opened. All parties to the trial and the witness in contempt entered. The court announced that it had adjudged the witness guilty of contempt in its presence,

(63) The fact that the party whose turn it is to examine does not desire to ask any questions shall be recorded.

(64) This caution is given in the case of improper language or behavior. For cautioning a witness see sec. 291.

(65) Or as the case may be.

(66) Give reply in full. For procedure when witness is charged with contempt see sec. 292.

(67) Insert an account of the occurrence in full.

(68) Or guard or orderly.

and had sentenced him, K—— L——, seaman second class, U. S. Navy, to be imprisoned for two months (69).

The witness continued his testimony:

6. Q. * * * .

A. * * * .

* * * * *

The witness was duly warned and was placed in the custody of the provost marshal, who was directed to deliver him to his commanding officer—the commanding officer of the U. S. S. *Colorado*—to whom a communication, copy appended marked “S”, was addressed, announcing the offense and sentence (70).

600. Witness as to character.—

A witness for the defense as to character entered and was duly sworn (71).

(Examined and testimony recorded as previously indicated.)

* * * * *

A member was called as a witness for the defense as to character and was duly sworn (72).

(Examined and testimony recorded as previously indicated.)

* * * * *

601. Accused as a witness.—

The accused was, at his own request, duly sworn as a witness in his own behalf (73).

Examined by the judge advocate:

1. Q. Are you the accused in this case?

A. I am.

Examined by the accused:

2. Q. * * * .

A. * * * .

* * * * *

(69) This is the maximum sentence allowed for any single act of contempt by the 42nd A. G. N.

Variation.—“The court announced that the witness had purged himself of contempt.”

(70) The details of the confinement are to be left to the commanding officer.

(71) Witnesses as to character or as experts are not to be summoned at Government expense.

For evidence of character see sec. 164.

(72) Testifying only as to previous good character of the accused does not challenge a member.

(73) Where the accused is without counsel, the following additional entry must here appear:

“The judge advocate stated to the court that the substance of section 359, Naval Courts and Boards, had been carefully explained to the accused.”

For the accused as a witness see sec. 234.

For the privilege of accused to testify see sec. 262.

602. Real evidence introduced.—

5. Q. I show you a knife. Do you recognize it?

A. I do.

6. Q. Where and under what circumstances have you seen it before?

A. * * *.

The knife was submitted to the judge advocate and to the court and by the accused offered in evidence. There being no objection, it was so received and marked "Exhibit 5."

NOTE.—The knife was returned to the owner upon completion of the trial. A description of the knife is appended marked "Exhibit 5" (74).

7. Q. * * *.

A. * * *.

* * * * *

603. Accused as a witness continued.—

Cross-examined by the judge advocate (75):

12. Q. * * *.

A. * * *.

* * * * *

Reexamined by the accused:

* * * * *

Recross-examined by the judge advocate:

* * * * *

Examined by the court:

* * * * *

Neither the accused, the judge advocate, nor the court desired further to examine this witness.

The witness said that he had nothing further to state.

The witness resumed his status as accused (76).

604. Defense rests.—

The defense rested (77).

The court then, at 4 p. m., adjourned until 10 a. m., to-morrow, Wednesday, November 9th (78).

(74) Except where an instrument of real evidence is of such a character that a true description thereof can not readily be made, or except where in the discretion of the court the instrument should be forwarded to the reviewing authority, the procedure given here may be followed.

For securing exhibits to the record or forwarding separately see sec. 502.

(75) For cross-examination of the accused see sec. 284.

(76) The accused is not warned.

For verification of testimony see sec. 295.

(77) This entry is omitted when the defense has offered no evidence.

(78) For adjournment or recess see secs. 568 and 586.

605. Fifth day.—

FIFTH DAY.

U. S. S. *Colorado*,
 SAN FRANCISCO, CALIF.,
Wednesday, November 9, 19—.

The court met at 10 a. m.

Present:

Captain A—— B. C——, U. S. Navy,

Commander D—— G. K——, U. S. Navy,

Captain C—— C——, U. S. Marine Corps, members, and

Captain C—— B. A——, U. S. Marine Corps, judge advocate, and his counsel.

F—— E. D——, yeoman first class, U. S. Navy, reporter.

The accused and his counsel.

A legal quorum not being present, the court then, at 10:05 a. m., took a recess until 10:15 a. m., at which time it reconvened (79).

Present: The same members as before, the judge advocate, the reporter, the accused and his counsel.

O—— P——, a witness for the prosecution reported to verify his testimony in accordance with the court's orders, and was directed to return the next day for this purpose.

The court then, at 10:15 a. m., adjourned until 10 a. m., tomorrow, Thursday, November 10th.

606. Sixth day.—

SIXTH DAY.

U. S. S. COLORADO,
 SAN FRANCISCO, CALIF.,
Thursday, November 10, 19—.

The court met at 10 a. m.

Present:

Captain A—— B. C——, U. S. Navy,

Commander D—— G. K——, U. S. Navy,

Lieutenant Commander J—— K. L——, Medical Corps,
 U. S. Navy,

Captain C—— C——, U. S. Marine Corps,

Lieutenant U—— V. W——, U. S. Navy, members, and

Captain C—— B. A——, U. S. Marine Corps, judge advocate, and his counsel.

(79) See note 10 to section 542—"Five members form a quorum."

For procedure in case of the absence of a member see sec. 378; of the judge advocate, sec. 379.

The accused and his counsel.

H—— J——, chief yeoman, U. S. Navy, reported as reporter and was duly sworn (80).

607. Absence of members (81).

Lieutenant Commander J—— K. L——, Medical Corps, U. S. Navy, handed the president of the court a letter for the convening authority explaining his absence from the court yesterday; copy prefixed marked "H" (82).

Lieutenant U—— V. W——, U. S. Navy, handed the president of the court a medical certificate for the convening authority, explaining his absence from the court yesterday; copy prefixed marked "I" (83).

608. Record corrected.—

The record of proceedings of the fourth and fifth days of the trial was read (84) and objected to by the accused (85) since the record on page — now reads "* * *", whereas it should read "* * *."

The court was cleared. The court was opened, and all parties to the trial entered. The court announced that the objection was sustained (86).

The judge advocate was directed to correct the record so that "* * *" on page — shall read "* * *."

With this correction the record was read and approved.

No witnesses not otherwise connected with the trial were present.

609. Testimony verified.—

O—— P——, who had previously testified, was called before the court, informed that his oath previously taken was still binding,

(80) For oath for reporter see appendix E.

(81) For the provisions of law relating to this see the 46th A. G. N. Where testimony has been received during the absence of a member, see art. 47, A. G. N., and secs. 378 and 590.

(82) Set forth in sec. 549.

For absence by order from a superior see sec. 376.

(83) Set forth in sec. 550.

For absence by reason of illness see sec. 377.

Status of members in respect to other duties.—An officer detailed for duty on a general court-martial is, while so serving, exempt from other duty, except in cases of emergency to be judged by his immediate commanding or next superior officer, who shall, in case he require such officer to perform other duty, at once communicate with the convening authority, via the president of the court, assigning the reasons for his action.

When a general court-martial adjourns without day, or for a period of more than two days, the president of the court shall report the fact to the senior officer present, and the members of the court shall then be available for other duty.

Detachment from ship or station.—The detachment of an officer from his ship or station does not of itself relieve him from duty as a member or judge advocate of a general court-martial; specific orders for such relief are necessary.

(84) The testimony need not be read.

(85) The judge advocate or the court (or a member, if the objection is not sustained—similar to questions by a member, sec. 287) may also make this objection.

(86) If the objection is not sustained the two entries following this are omitted from the record.

and, upon having his testimony read to him, pronounced it correct, was duly warned, and withdrew (87).

610. Rebuttal.—

The rebuttal began (88).

611. Witness recalled.—

R—— Q——, coxswain, U. S. Navy, a witness for the prosecution, was recalled and warned that the oath previously taken by him was still binding.

Examined by the judge advocate:

1. Q. * * * (89).

A. * * *

* * * * *

(Examined and testimony recorded as previously indicated.)

Neither the judge advocate, the accused, nor the court desired further to examine this witness.

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

The rebuttal ended.

612. Surrebuttal.—

The accused did not desire to offer any evidence in surrebuttal (90).

613. Witness for the court.—

The court was cleared. The court was opened and all parties to the trial entered. The court announced that it desired further testimony, and directed that I—— K——, boatswain's mate second class, U. S. Navy, be called as a witness for the court (91).

A witness for the court entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name, rate, and present station.

(87) *Variation.*—"* * * and stated that he had read over (or, had had read over to him) the testimony given by him on fourth day of the trial, pronounced it correct, was duly warned, and withdrew." (Or, "and stated that he desired to make the following correction in his testimony. Page —, answer to question no. —, line no. —, strike out the words * * * and insert the words * * *." With this correction, he pronounced the testimony correct, was duly warned, and withdrew.")

For verification of testimony see sec. 295.

For manner of correcting testimony see sec. 296.

(88) This entry is omitted if there be no rebuttal.

In general, evidence in rebuttal must be limited to that replying to the evidence produced by the defense. But see sec. 266, providing that the court may, prior to arrival at its findings, permit a case to be reopened. In such case the proper entry is "The prosecution reopened."

(89) Begin numbering questions anew. The introductory questions need not be repeated.

(90) *Variation.*—

"The surrebuttal began.

* * * * *

"The surrebuttal ended."

(91) *Variation.*—"* * * and directed that M—— N——, ensign, U. S. Navy, be recalled as a witness for the court."

A. I——— K———, boatswain's mate second class, U. S. S. *Colorado*.

2. Q. If you recognize the accused, state as whom.

A. * * *.

Examined by the court:

3. Q. * * *.

A. * * *.

* * * * *

Neither the judge advocate nor the accused desired to examine this witness (92).

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

614. Statement of accused.—

The accused read a written statement in his defense, appended, marked "T" (93).

615. Arguments.—

The judge advocate read his written opening argument, appended marked "U" (94).

The accused read a written argument, appended marked "V" (95).

(92) For cross-examination and rebuttal of such witness see sec. 252.

(93) When the accused makes a written statement the original thereof should be appended to the record and it should be signed by the accused.

For statement of accused see sec. 419.

If accused be without counsel, immediately following this entry should appear:

"The judge advocate informed the court that the substance of section 359, Naval Courts and Boards, had been carefully explained to the accused."

Variation 1.—"The accused made an oral statement as follows: * * * *."

(See sec. 423 as to when statement may be oral.)

Var. 2.—"The accused requested a delay until —— to prepare his written statement. The request was granted, and the court then, at — p. m., adjourned to meet to-morrow, ——, at — a. m."

Var. 3.—"The accused did not desire to make a statement, and submitted his case to the court."

In case the statement is more than a mere request for clemency, the procedure is as follows:

"The court was cleared. The court was opened and all parties to the trial entered. The court announced that it considered the statement to be more than a mere request for clemency, and directed the judge advocate to proceed as though pleas of not guilty had been entered."

Var. 4.—"The accused did not desire to make a statement." (This variation should be used when the accused intends to make an argument or to introduce evidence as to character in mitigation.)

(94) For arguments, see secs. 421 to 423.

Variation 1.—"The judge advocate made the following opening argument: * * * *."

Var. 2.—"The judge advocate desired to make no opening argument."

(95) The argument, of course, may be made by counsel, but is recorded as above. See in this connection note 51 to sec. 562.

Variation 1.—"The accused requested a delay until —— to prepare his written argument. The request was granted and the court then at — a. m., took a recess until — p. m., at which time it reconvened.

"Present: * * * *."

Var. 2.—"The accused made the following argument: * * * *."

Var. 3.—"The accused desired to make no argument, and submitted his case to the court."

The court then, at 11:30 a. m., took a recess until 1 p. m., at which time it reconvened.

Present: All the members, the judge advocate and his counsel, the reporter, the accused, and his counsel.

No witnesses not otherwise connected with the trial were present.

The judge advocate read his written closing argument, appended marked "W" (96).

616. Trial finished.—

The trial was finished.

617. Further evidence allowed.—

The accused requested that the court allow the defense to introduce further evidence, as he had just been informed that K——L——, seaman second class, had made a confession that * * *.

The court announced that the defense would be allowed to introduce further evidence (97).

The defense reopened.

K——L——, a witness for the defense, was recalled and warned that the oath previously taken by him was still binding.

Examined by the accused:

1. Q. * * * (98).

A. * * *.

* * * * *

(Examined and testimony recorded as previously indicated.)

The defense had no further evidence to offer.

The trial was finished.

The court was cleared.

The court was opened. All parties to the trial entered and the court then, at 4 p. m., adjourned until 10 a. m., tomorrow, Friday, November 11 (99).

(96) Variations similar to those in the preceding note.

The prosecution in its closing argument is limited to discussion of the argument of the accused. If the accused waives his argument, the prosecution loses the right to make a closing argument.

(97) For introduction of evidence see sec. 266. The prosecution has equal rights in this regard.

(98) Begin numbering questions anew.

(99) For adjournment or recess see secs. 568 and 586.

618. Seventh day.—

SEVENTH DAY.

U. S. S. COLORADO,
SAN FRANCISCO, CALIF.,
Friday, November 11, 19—.

The court met at 10 a. m.

Present:

Captain A—— B. C——, U. S. Navy,
Commander D—— G. K——, U. S. Navy,
Lieutenant Commander J—— K. L——, Medical Corps, U. S.

Navy,

Captain C—— C——, U. S. Marine Corps,
Lieutenant U—— V. W——, U. S. Navy members, and
Captain C—— B. A——, U. S. Marine Corps, judge advocate
and his counsel.

H—— J——, chief yeoman, U. S. Navy, reporter.

The accused and his counsel.

The record of proceedings of the sixth day of the trial was read
and approved (1).

619. Findings (2).—

The court was cleared (3).

The judge advocate was recalled and directed to record the fol-
lowing findings:

The first specification of the first charge not proved.

The second specification of the first charge proved by plea.

And that the accused, X—— Y. Z——, seaman second class,
U. S. Navy, is of the first charge guilty.

The third (5) specification of the second charge proved in part,
proved except the words “* * *”, which words are not
proved, and for which the court substitutes the words “* * *”,
which words are proved (6).

And that the accused, X—— Y. Z——, seaman second class,
U. S. Navy, is of the second charge, guilty in a less degree than
charged, guilty of * * * (7).

(1) If objected to see sec. 608.

(2) For “Findings” see secs. 425 to 435.

(3) When the accused has plead guilty throughout, clearing the court to deliberate on
the findings may be dispensed with.

(5) The first and second specifications of this charge having been nol-prossed.

(6) For when specification is found “proved in part” see sec. 429.

(7) Variation.—“* * * is of the second charge guilty.”

For finding “guilty in a less degree than charged” see sec. 430.

For what are the lesser included offenses of each charge see the particular charge in
Chap. II.

The specification of the third charge proved in part, proved except the words "desert from said ship and from the U. S. naval service, and did remain a deserter", which words are not proved, and for which the court substitutes the words "without leave from proper authority absent himself from his station and duty on board said ship, to which he had been regularly assigned, and did remain so absent from the U. S. naval service" which words are proved.

And that the accused, X—— Y. Z——, seaman second class, U. S. Navy, is of the third charge, guilty in a less degree than charged, guilty of absence from station and duty without leave.

The specification of the additional charge, not proved.

And that the accused, X—— Y. Z——, seaman second class, U. S. Navy, is of the additional charge, not guilty; and the court does therefore acquit (8) the said X—— Y. Z——, seaman second class, U. S. Navy, of the additional charge (9).

The court was opened and all parties to the trial entered. The court informed the accused that it had found the first specification of the first charge and the specification of the additional charge not proved (10).

620. Matter in aggravation, mitigation, and extenuation (11).—A witness for the defense as to matters in mitigation (or as the case may be) entered and was duly sworn.

(Examination and testimony recorded as previously indicated.)

* * * * *

The judge advocate was recalled as a witness for the defense in mitigation and was warned that the oath previously taken was still binding.

* * * * *

1. Q. If you are the legal custodian of the current service record of the accused, produce it.

The witness produced the current service record of the accused, and it was submitted to the judge advocate and to the court, and by the accused offered in evidence for the purpose of reading into the record extracts therefrom in mitigation.

There being no objection, it was so received.

(8) Or, "fully acquit", "honorably acquit", "most fully and honorably acquit."

(9) Should the accused be acquitted of all charges the findings are read in open court and the procedure of sec. 433 followed. The entry in the record is "The court was opened and all parties to the trial entered. The judge advocate read the findings of the court."

(10) Sec. 433.

(11) See secs. 164, 165, and 166.

2. Q. Refer to that record and read such portions thereof as relate to the proficiency in rating, sobriety, and obedience of the accused, and also award of good conduct medal and commendations * * *.

The witness read extracts from the said record, copy appended marked "Exhibit 6."

Cross-examined by the judge advocate:

3. Q. Read from that record such portions as show the offenses committed by the accused during his current enlistment.

* * * * *

621. Record of previous convictions (12).—

The judge advocate stated that he had record of previous conviction(s) (13), that the rate of pay of the accused is \$48 a month, and that he enlisted on March 4, 19—, to serve for four years, and gave as his date of birth January 13, 1915 (14).

The court announced that it was ready to receive the record of previous convictions.

There being no objection, the judge advocate read from the current (15) service record of the accused (16) an extract (extracts) showing previous conviction(s), copy (copies) appended marked "X" (17).

622. Sentence (18).—

The court was cleared.

The court then, at 11:45 a. m., took a recess until 1 p. m., at which time it reconvened (19).

Present: All the members.

(12) Secs. 436 to 441.

(13) In case the accused be an officer, the entry following this point is omitted.

Variation.—"The judge advocate stated that he had no record of previous conviction."
(14) In the case of fraudulent enlistment the data required in this entry will be taken from the last, or fraudulent enlistment.

(15) For exceptions to the general rule that the previous convictions must relate to the current enlistment or current extension see sec. 438.

(16) In the case of conviction during fraudulent enlistment:

Variation.—" * * * (and) of the accused while serving under the name of _____, _____, U. S. Navy * * *."

(17) *Variation 1.*—"The accused (or the judge advocate or the court) objected to the introduction of the record of his (the) trial by summary court-martial, approved June 12, 19—, on the ground that the record had not been approved by the convening authority.

"The court was cleared. The court was opened and all parties to the trial entered. The court announced that the objection was sustained."

In case the accused is an officer:

Var. 2.—"There being no objection, the judge advocate read to the court Court-Martial Order No. 13 of 19— in the case of the accused."

(18) For general provisions relating to the sentence see secs. 443 to 449. See also limitations of punishments, sec. 451 *et seq.*

(19) When the court while in closed session takes a recess, the court need not be reopened for formally announcing that fact, but the parties in attendance should be informed as the court leaves of the hour at which it will reconvene.

The judge advocate was recalled, and directed to record the sentence of the court as follows (20):

The court, therefore, sentences him, X—— Y. Z——, seaman second class, U. S. Navy, to be reduced to the rating of apprentice seaman (21), to be confined for a period of eighteen (18) months (22), to be dishonorably discharged (23) from the United States naval service, and to suffer all the other accessories of said sentence as prescribed by section 622, Naval Courts and Boards (24).

A—— B. C——,

Captain, U. S. Navy, President.

D—— G. K——,

Commander, U. S. Navy, Member.

J—— K. L——,

Lieutenant Commander, Medical Corps, U. S. Navy, Member.

C—— C——,

Captain, U. S. Marine Corps, Member.

U—— V. W——,

Lieutenant, U. S. Navy, Member.

C—— B. A——,

Captain, U. S. Marine Corps, Judge Advocate (25).

(20) For recordation and authentication of sentence see sec. 448.

(21) In all cases involving confinement at hard labor for more than three months, the accused is to be reduced to the lowest rating of that branch of the service to which he belongs.

For classification for disrating see sec. 678.

(22) **Terms of imprisonment to be defined.**—A sentence of confinement must express distinctly for what period it shall continue. If the period of confinement adjudged be less than three years it should be expressed in months; if three years or more, in years and fractions thereof.

(23) Or, “* * * to be discharged from the United States naval service with a bad-conduct discharge, and * * *.”

(24) **Meaning of “other accessories of said sentence.”**—The words “other accessories of said sentence” when hereafter used in the sentence of a general court martial in the case of an enlisted man shall be understood to include the following: (a) The person so sentenced shall perform hard labor while confined pursuant to such sentence and (b) shall forfeit all pay (and allowances, in the case of an enlisted man of the Marine Corps sentenced to dishonorable or bad-conduct discharge) that may become due him during a period equivalent to the term of such confinement (or if sentenced to dishonorable or bad-conduct discharge, during his current enlistment).

Any unliquidated portions of loss of pay under prior sentences of deck courts or summary courts-martial are automatically remitted upon approval of a sentence of a general court martial involving confinement in a naval prison, with loss of pay as provided in this section. However, where sentences of general courts martial involving such confine-

623. Recommendation to clemency.—

In consideration of the mitigating circumstances shown by the evidence to have existed in connection with the offense set out in the second specification of Charge I, and of the absence of evil motive

ment and loss of pay are, after approval by the convening authority, disapproved, wholly remitted or set aside by the Navy Department, or a naval prison is not designated as the place of confinement, such action will automatically nullify ab initio the remission of loss of pay provided for in the preceding sentence.

In cases of fraudulent enlistment, where a man has been enlisted in both the Navy and Marine Corps, and has not been discharged from either, the sentence should follow the form set forth above. In such cases he should be reduced to the lowest rating in the branch of the service in which he first enlisted (assuming his enlistment has not expired), which will be regarded as his proper enlistment and under which he will be caused to serve his sentence.

Marines sentenced to loss of allowances.—As the term "other accessories" includes loss of allowances, in the case of an enlisted man of the Marine Corps, the convening authority should remit that part of the sentence involving loss of allowances when the place designated as the place of confinement is other than a naval prison or receiving ship in lieu thereof or where the confinement is remitted and the man is to be retained in such status that he will require his clothing allowance.

Discharge alone may be adjudged.—A general court martial may sentence an enlisted man to a dishonorable (bad-conduct) discharge alone, without adjudging a period of confinement and "other accessories." But this sentence is not ordinarily deemed advisable.

Death sentence.—When adjudged.—The death sentence may be adjudged only in cases where such punishment is expressly provided in the Articles for the Government of the Navy. Such sentence may be carried into execution only upon the confirmation of the President.

Variation 1.—" * * * to be shot to death by musketry (or, hanged by the neck until dead), two-thirds of the members concurring."

Dismissal.—A sentence of dismissal may be adjudged in the case of an officer, but in time of peace such sentence may be adjudged only in such cases as the limitations of punishment prescribed by the President permit. A sentence to dismissal can be carried into execution only upon the confirmation of the President.

Dismissal to precede imprisonment of an officer.—In all cases where an officer is sentenced to imprisonment the sentence shall provide for his dismissal prior thereto. (See sec. 334 as to the continuation of naval jurisdiction in such a case.)

Var. 2.—" * * * to be dismissed from the United States Marine Corps and from the United States naval service."

Var. 3.—" * * * to be dismissed from the United States naval service and to be imprisoned at hard labor in such prison or penitentiary as the convening authority may designate for a period of twenty-four (24) months."

Loss of numbers.—An officer may be sentenced to a loss of numbers. When an officer's position on the Navy Register will not permit of his losing the adjudged numbers in grade, the court shall place him at the foot of the list, with the proviso that he is to remain in that position until he has lost the required numbers.

Var. 4.—" * * * to lose fifty (50) numbers in his grade (to be placed at the foot of the ———'s list of present date and to there remain until he shall have lost fifty (50) numbers in his grade) (to lose fifty (50) line officer running mate numbers)."

In case of an officer holding both a permanent and a temporary rank:

Var. 5.—" * * * to lose fifty (50) numbers in his temporary grade of ——— and to lose fifty (50) numbers in his permanent grade of ———" (or, " * * * to be placed at the foot of the temporary ———'s list and of the permanent ———'s list of present date and to remain there until he shall have lost fifty (50) numbers in his grades").

Loss of seniority.—In the case of warrant officers, where promotion is based upon length of service in grade, loss of seniority for a specified period of time should be adjudged in lieu of a loss of numbers.

Var. 6.—" * * * to lose twenty-one (21) months' seniority in the date of his warrant as machinist; to lose corresponding rank in the list of machinists of the Navy; and to lose fifty dollars (\$50) of his pay per month for a period of one year, total loss of pay amounting to six hundred dollars (\$600)."

Loss of pay.—See sec. 446.

(26) believed by the court to have existed in connection with the offense set out in the third specification of Charge II, we strongly recommend X—— Y. Z——, seaman second class, U. S. Navy, to the clemency of the reviewing authority (27).

A—— B. C——,
Captain, U. S. Navy, President.

J—— K. L——,
Lieutenant Commander, Medical Corps,
U. S. Navy, Member.

C—— C——,
Captain, U. S. Marine Corps, Member (28).

In case of reduction in rating coupled with loss of pay, care shall be observed that the loss is based on the reduced rate.

Var. 7.—"The court, therefore, sentences him ——, ensign, U. S. Navy, to lose twenty-five dollars (\$25) per month of his pay for a period of six (6) months, total loss of pay amounting to one hundred fifty dollars (\$150)."

Var. 8.—"The court therefore sentences him, ——, seaman first class, U. S. Navy, to lose pay amounting to one hundred forty-five dollars (\$145), and to be dishonorably discharged from the United States naval service." (In a case in which this form of sentence is used, the convening authority should mitigate it in order to comply with section 470.)

Public reprimand—not favored.—The sentence of public reprimand, while legal, is not regarded with favor by the department.

Sentences of suspension—not favored.—The undesirability of adjudging a sentence of suspension, with full or with reduced pay, has frequently been commented upon by the department. This sentence is objectionable because it is detrimental to the interests of both the officer and the Government. This form of punishment may, however, legally be imposed for an offense committed by an officer and the term of suspension may be for any stated period. Also, the President may mitigate a sentence of dismissal to suspension for a limited time (5 Op. Atty. Gen. 43). There are properly two kinds of suspension—suspension from rank and suspension from duty—and sentences including suspension must state whether from rank or from duty only. The former operates to deprive an officer, during the period specified, of the right to promotion and of all the other rights and privileges incident to his rank; the latter merely deprives him of authority to give orders to or exact obedience from his inferiors.

Restriction.—A general court martial may sentence an officer or enlisted man to be restricted to the limits of a ship, post, or station for a specified period. This form of sentence is usually accompanied by a forfeiture of pay.

Var. 9.—" * * * to be restricted to his ship or station for a period of three (3) months, and to lose fifty dollars (\$50) per month of his pay for a period of ten (10) months, total loss of pay amounting to five hundred dollars (\$500)."

Summary court punishments may be adjudged.—General courts martial are empowered by statute to adjudge any of the punishments authorized for summary courts martial (art. 35, A. G. N.). It is the practice of the department to cause all summary court-martial sentences adjudged by general court martial to be carried into execution at the place where the prisoner may be serving, and in the same manner as if the sentence had been adjudged by summary court martial.

(25) For the provisions of law as to signing the record see art. 52, A. G. N. The signatures should appear on the same page as the sentence.

(26) Intent is an essential element of any offense; motive is immaterial, but may properly be ground for recommending clemency.

(27) For recommendation to clemency see sec. 450. A vague and indefinite recommendation is of no practical use. The facts on which it is based should be succinctly stated.

(28) The judge advocate never signs the recommendation to clemency.

For provisions of law in this regard see 51st A. G. N.

624. Final entry.—

The court then, at 3 p. m., adjourned to meet on Monday next at 10 a. m. (29).

A—— B. C——,
Captain, U. S. Navy, President.

C—— B. A——,
Captain, U. S. Marine Corps, Judge Advocate (30).

625. Documents appended: Brief of counsel (31).—

(Brief of argument of the counsel for the accused in support of the plea in bar of trial entered in sec. 577.) P

626. Same: Certificate of court to district attorney in case of a contumacious civilian witness (32).—

COURT MARTIAL ROOM, U. S. S. COLORADO,
 SAN FRANCISCO, CALIF.,
November 8, 19—.

THE UNITED STATES DISTRICT ATTORNEY FOR THE NORTHERN DISTRICT OF CALIFORNIA:

SIR: A naval general court martial was convened on board the U. S. S. *Colorado* then at anchor in San Francisco Bay off the city of San Francisco, California, by an order of the Commander Battleships, Battle Force, United States Fleet. A certified copy of said order is hereto appended, marked "A"; also certified copies of subsequent modifications thereof are hereto appended, marked "B", "C", "D", "E", and "F" (33).

In the case of the United States against X—— Y. Z——, U. S. Navy, transmitted to the court by a letter, certified copy hereto appended marked "G" (34), a material witness for the prosecution, O—— P——, residing at ——, within this State, was duly subpoenaed to appear as such witness before said court martial; certified copy of subpoena (35) and of the return of service thereon, hereto appended marked "H" (36).

(29) *Variation 1.*—"The court was opened and proceeded with the trial of ——, ——, U. S. ——."

Var. 2.—"The court, having no more cases before it, adjourned to await the action of the convening authority."

Var. 3.—"The court adjourned to await the call of the president."

(30) The final entry is authenticated by the signatures of the president and of the judge advocate.

(31) Documents having to do with the precept or with the charges and specifications are prefixed; all others are appended.

(32) This is the certificate ordered by the court in sec. 592.

(33) These are the precept and modifications.

(34) This is the letter part of the charges and specifications.

(35) Or, "subpoena duces tecum." For form see appendix F.

(36) For form of return see app. F.

Upon being duly sworn as a witness in the aforesaid case, and in the course of his testimony therein, the said O—— P—— was asked the following question by the judge advocate:

5. Q. * * *?

The witness declined to answer the question, and, having been tendered (37) his lawful fee and mileage, was then cautioned and informed as to the penalty of persisting in his refusal to answer the said question, which was again put to him. The witness again declined to answer, and gave the following reason for his refusal: “* * *” (38).

The foregoing facts are certified to you as correct for your action thereon, in accordance with the provisions of section 12 of the act of February 16, 1909 (title 34, U. S. Code, sec. 1200, art. 42 (c)).

By order of the court:

A—— B. C——,
Captain, U. S. Navy, President.

Attest:

C—— B. A——,
Captain, U. S. Marine Corps, Judge Advocate (39). Q

(37) Or, “paid.”

(38) Enter reason of witness in full, and verbatim if possible.

(39) For the provisions of law relating to this see art. 42, A. G. N.

For when a subpoena is disregarded see sec. 255.

For informing the district attorney see sec. 294.

Object of certificate.—The certification of facts is for the information of the district attorney and to enable him to prepare the proper information charging the witness with the offense, and, except in two cases mentioned below, the accuracy and precision required in an indictment is not essential.

Precise question set out.—The first exception referred to above is where the witness refuses to answer a question. In such a case the precise question propounded to him should be set out, likewise the reason, if any, which the witness gives for not answering.

Refusal to obey subpoena duces tecum.—In case the contumacy is in the refusal of the witness to produce a book, paper, or document the second exception referred to above occurs. In such a case the witness, having been subpoenaed to produce such book, etc., the book, paper, or document should be particularly and certainly described and identified, which description should also correspond with that given in the subpoena duces tecum. The reason for the refusal of the witness should also be accurately set forth.

Substance of certificate.—The certificate should contain the following information: Copy of order convening court, with copies of any subsequent modifications; copy of subpoena served on the witness, showing the place from which summoned and that such place was within the State, Territory, or District within which the court is held; facts as to (1) neglect to appear, (2) refusal to appear, (3) refusal to qualify as a witness. (4) refusal to testify, or (5) refusal to produce documentary evidence, all to be definitely but succinctly stated; also a statement that the witness was paid or tendered his lawful fee and mileage.

Further information.—With a proper observance of the particularity, accuracy, and precision in the two cases above referred to, the matter indicated in the foregoing paragraph is sufficient to meet the requirements of the law. Any further information can readily be furnished if needed by the district attorney.

Record and signature.—The record of the proceedings shall state the facts relative to any case of contumacy, and that the court has ordered the facts to be certified to the district attorney. The formal certificate of facts, stating that it is made by “order of the court”, will be sufficiently signed if done officially by the president of the court and attested by the judge advocate.

627. Same: Letter from convening authority that witnesses can not appear.—

File ———.

UNITED STATES FLEET,
BATTLESHIPS, BATTLE FORCE,
U. S. S. WEST VIRGINIA, Flagship.

SAN PEDRO, CALIF.,
November 5, 19—.

From: Commander Battleships, Battle Force.

To: Captain C—— B. A——, U. S. Marine Corps, judge advocate, general court martial, U. S. S. *Colorado*.

Subject: Summons for witnesses (40).

Inclosures: 2.

1. The summons drawn by you to Lieutenant Commander ——— and ———, boatswain's mate first class, U. S. Navy, to appear as witnesses before the general court-martial on the U. S. S. *Colorado*, of which you are judge advocate, are herein returned.

2. It is impracticable to transmit these summons to the persons named as both are on board the U. S. S. ——— now en route to Balboa, Canal Zone.

I—— H. G——,
Vice Admiral, U. S. Navy,
Commander, Battleships, Battle Force,
United States Fleet.
R

628. Same: Communication to commanding officer of naval witnesses in contempt.—

U. S. S. COLORADO,
SAN FRANCISCO, CALIF.,
November 8, 19—.

From: Captain A—— B. C——, U. S. Navy, president, general court martial, U. S. S. *Colorado*.

To: The Commanding Officer, U. S. S. *Colorado*.

Subject: K—— L——, seaman second class, U. S. Navy, U. S. S. *Colorado*, adjudged guilty of contempt of court and sentenced to imprisonment for two (2) months.

1. The above-named man this day appeared as a witness before this court and was adjudged in contempt of court in that he * * * (41). The court thereupon, in accordance with the authority vested in it by

(40) For summoning witnesses see secs. 245 and 246.

(41) This is as set out in sec. 599.

article 42 of the Articles for the Government of the Navy sentenced him, K—— L——, seaman second class, U. S. Navy, to be imprisoned for two (2) months.

2. It is requested that you execute this sentence (42).

A—— B. C——.

A true copy. Attest:

C—— B. A——,

Captain, U. S. Marine Corps, Judge Advocate.

S

629. Same: Written statement of accused.—

(Here is appended the written statement of the accused submitted in sec. 614.) (43)

T

630. Same: Judge advocate's written opening argument.—

(Here is appended the written opening argument read by the judge advocate in sec. 615) (44).

U (1), U (2), etc.

631. Same: Written argument of the accused.—

(Here is appended the written argument read by the accused in sec. 615.)

V (1), V (2), etc.

632. Same: Judge advocate's written closing argument.—

(Here is appended the written closing argument read by the judge advocate in sec. 615.)

W (1), W (2), etc.

633. Same: Record of previous conviction (45).—

Extract of previous conviction from the current enlistment record of X—— Y. Z——, seaman second class, U. S. Navy:

NAVAL TRAINING STATION,

San Francisco, Calif.

6 June 36 awol to 8 June, 36 hrs. SCM sol. conf. B&W 10 days, f. r. every 3d day, lose pay \$11. App. 11 June 36, by C. O., 12 June by rev. auth.

(Signed —— ———.)

A true copy. Attest.

C—— B. A——,

Captain, U. S. Marine Corps,

Judge Advocate.

X

(43) The place of confinement is left to the commanding officer of the witness.

(43) The statement is appended only when it is written.

(44) Arguments are appended only when written.

(45) This was introduced in sec. 621.

634. Exhibits.—

(Following the appended documents, the exhibits are appended in the order in which they were received in evidence. When the exhibit is an instrument of real evidence the procedure set forth in sec. 602 should be followed.) (46).

Exhibit 1

(to)

Exhibit 6.

635. Receipt of accused for copy of record (47).—

U. S. S. COLORADO,
SAN FRANCISCO, CALIF.,

November 14, 19—.

I hereby acknowledge the receipt of a copy of the record of proceedings of my trial by general court martial held November 4 to 11, 19—, (48).

X—— Y. Z——,

Seaman second class, U. S. Navy.

(46) For securing exhibits to the record or forwarding separately see sec. 502.

(47) The receipt shall in each case be the last document appended to the record as prepared by the court. Notation shall be made on the cover page.

(48) *Variation.*—" * * * held this date."

PART II. REVISION (49).

636. Cover page.—

Case of

X—— Y. Z——,

Seaman second class,

U. S. Navy.

November 21, 19—.

RECORD OF PROCEEDINGS IN REVISION

OF A

GENERAL COURT-MARTIAL

CONVENED ON BOARD THE (50)

U. S. S. COLORADO

BY ORDER OF

THE COMMANDER, BATTLESHIPS, BATTLE FORCE,
UNITED STATES FLEET

Letters to:

Commanding Officer, U. S. S. *Colorado*.

Commandant, Mare Island.

General Accounting Office (51), November 24, 19—.

Copy furnished (52).

(49) For revision in general see secs. 458 to 468.

A separate record is kept on revision and is to be prefixed to the record of which it is a revision.

(50) Variations as in sec. 540.

(51) The complete address is: General Accounting Office, Washington, D. C.

(52) Secs. 521 and 522.

637. Letter returning record for revision.—

File ———:

UNITED STATES FLEET,
BATTLESHIPS, BATTLE FORCE,
U. S. S. WEST VIRGINIA, Flagship.

SAN PEDRO, CALIF.,
November 18, 19—.

From: Commander Battleships, Battle Force.

To: Captain A—— B. C——, U. S. Navy, president, general court martial, U. S. S. *Colorado*.

Subject: Trial of X—— Y. Z——, seaman second class, U. S. Navy.

Inclosure: 1.

1. The record of proceedings of the general court martial of which you are president, in the case of the above-named man, is herewith returned to the court.

2. The convening authority notes that the court found certain words of the third specification of the second charge not proved and substituted for these words certain other words which it found proved. The specification as thus amended is not grammatically correct. Furthermore, it is vague and indefinite in that the time and place of the commission of the offense are not specified in the specification as amended.

3. The court will reconvene for the purpose of reconsidering the findings and sentence. At the conclusion of the proceedings in revision, the record will be returned to the convening authority.

I—— H. G—— (53),
Vice Admiral, U. S. Navy,
Commander Battleships, Battle Force,
United States Fleet.

A

638. Court meets.—

U. S. S. COLORADO,
SAN FRANCISCO, CALIF.,
Monday, November 21, 19—.

The court reconvened at 10 a. m., pursuant to an order hereto prefixed marked "A", which was read by the judge advocate.

Present:

Captain A—— B. C——, U. S. Navy,
Commander D—— G. K——, U. S. Navy,

(53) Revision must be before the same court.

For power of the reviewing authority see sec. 474.

The reviewing authority is not to return the record with a view to having the court increase the sentence.

Lieutenant Commander J—— K. L——, Medical Corps, U. S. Navy,

Captain C—— C——, U. S. Marine Corps.

Lieutenant U—— V. W——, U. S. Navy, members (54), and Captain C—— B. A——, U. S. Marine Corps, judge advocate (55).

H—— J——, chief yeoman, U. S. Navy, reporter (56).

639. Findings and sentence revised.—

The court was cleared (57).

The judge advocate was recalled and directed to record that the court decided to revoke its former finding on the third specification of the second charge in the case of X—— Y. Z——, seaman second class, U. S. Navy, and to substitute therefor the following finding (58):

The third specification of the second charge proved in part, proved except the words “* * *,” which words are not proved, and for which the court substitutes the words “* * *,” which words are proved.

The court decided respectfully to adhere to the remainder of its former findings and to its former sentence (59).

A—— B. C——,

Captain, U. S. Navy, President.

D—— G. K——,

Commander, U. S. Navy, Member.

J—— K. L——,

*Lieutenant Commander, Medical Corps,
U. S. Navy, Member.*

C—— C——,

Captain, U. S. Marine Corps, Member.

U—— V. W——,

Lieutenant, U. S. Navy, Member.

C—— B. A——,

Captain, U. S. Marine Corps, Judge Advocate.

(54) There must be a legal quorum present for revision.

(55) The same judge advocate need not officiate in revision. But in case a new one is appointed to act the procedure of sec. 461 must be observed.

(56) When applicable the following entry next appears on the record:

“The court having decided that the presence of accused was necessary to the ends of justice, the accused (with counsel) was called before the court and the convening order was reread.”

For the presence of the accused in revision see sec. 465.

(57) The court will be closed to revise the findings and sentence.

(58) *Variation 1.*—“* * * decided to correct the following clerical errors:

“(a) On page —, by inserting between lines 10 and 11, the following: “* * *.”

“(b) On page 9, by omitting from lines 16 and 17 the following: “* * *.”

“(c) On page 20, by omitting the words “* * *”, lines 5 to 9, inclusive, and substituting therefor the words “* * *.”

(59) The revised findings and sentence and statement that the court respectfully adheres to its former ones must be in the handwriting of the judge advocate.

640. Final entry.—

The court then, at 10:30 a. m., adjourned to meet tomorrow at 10 a. m. (60).

A—— B. C——,
Captain, U. S. Navy, President.

C—— B. A——,
Captain, U. S. Marine Corps, Judge Advocate.

641. Receipt of accused for copy of record (61).—

U. S. S. COLORADO,
 SAN FRANCISCO, CALIF.,
November 21, 19—.

I hereby acknowledge receipt of a copy of the record of proceedings in revision of my trial by general court martial held this date (62).

X—— Y. Z——,
Seaman second class, U. S. Navy.

PART III. ACTION OF THE CONVENING AUTHORITY**642. Action of the convening authority on the record (63).—**

UNITED STATES FLEET,
 BATTLESHIPS, BATTLE FORCE,
 U. S. S. WEST VIRGINIA, FLAGSHIP,
 SAN PEDRO, CALIF.,
November 24, 19—.

The proceedings, findings, and sentence of the general court martial in the foregoing case of X—— Y. Z——, seaman second class, U. S. Navy, are approved (64).

In view, however, of the recommendation to clemency made by three of the five members of the court, the period of confinement, with corresponding accessories, is reduced to twelve (12) months.

(60) Variations as under sec. 624.

(61) The accused is entitled to a copy of the proceedings in revision to the same extent as he is to a copy of the original proceedings.

(62) For variations see sec. 635.

(63) For action by convening and reviewing authorities in general see secs 469 to 485.

(64) This form should be followed whether or not there have been proceedings in revision, as the form covers the entire proceedings.

The naval prison at the navy yard, Mare Island, California (65), is designated as the place for the execution of so much of the sentence as relates to confinement (66).

I— H. G—,
Vice Admiral, U. S. Navy,
Commander, Battleships, Battle Force,
United States Fleet.

(65) *Designation of prison.*—Officers authorized to convene general courts-martial are empowered to designate prisons for the confinement of persons sentenced thereby. Prisons will be designated in accordance with instructions issued from time to time by the Secretary of the Navy.

Where sentences as approved include confinement for six months or less, such confinement should be executed on the station in such place as may be suitable. Whenever prisoners are so confined the provisions of the "Manual for the Government of U. S. Naval Prisons" will apply in so far as practicable. In all such cases the weekly and monthly reports required by the Manual will be made to the Secretary of the Navy (J. A. G.).

The convening authority, after acting on a case, will order transportation and send the prisoner, under proper guard, to the designated prison by the earliest Government conveyance, or, if Government conveyance will not be available within a reasonable time, then by private carrier, notifying the commandant at the navy yard or station at which the designated prison is located, by letter, stating the offense, sentence, action of the convening authority, and date of such action. A similar letter shall be sent to the General Accounting Office, Audit Division, giving the same data, *and in cases of desertion and absence without or over leave, additional information showing the dates of beginning and ending of unauthorized absence.* In cases where, from the nature of the charge, a loss to the Government may have resulted, the promulgating letter should state whether or not there has been any loss to the Government, and, if so, the amount thereof. The service records and pay accounts, or staff returns, of such prisoners should accompany them.

Notation will be made on the cover sheet of the court-martial record (in case of revision this should appear on the cover sheet of the revision) in the office of the convening authority that the above-mentioned letters have been sent, thus: Letters to Commandant, Mare Island, Calif., and General Accounting Office (date). The action of the convening authority shown on the record of the case as forwarded to the Judge Advocate General will be sufficient notification to the Department as to the designated place of confinement.

(66) *Publication by court-martial orders.*—Except in cases where the law requires the confirmation of the sentence by the President of the United States, the finding and sentence of every general court-martial approved by an officer having authority to order such court shall be communicated by him in a court-martial order to his command. This is to be done notwithstanding that the accused may have deserted in the meantime. Should the proceedings of such court-martial be disapproved in any particular for any informality or irregularity of the court, the particular informality or irregularity will be made known in the court-martial order promulgating the result of the trial, so as to prevent, if possible, a recurrence of similar errors.

Variation 1.—"The proceedings, findings, and sentence of the general court-martial in the foregoing case of _____, _____, U. S. Navy, are approved, and the naval prison at the navy yard, _____, is designated as the place for the execution of so much of the sentence as relates to confinement."

Var. 2.—"The proceedings, findings, and sentence of the general court-martial in the foregoing case of Lieutenant _____, _____, U. S. Navy, are approved. He will be released from arrest and restored to duty."

Var. 3.—"The proceedings of the general court-martial in the foregoing case of _____, _____, U. S. Navy, are approved; the findings and the sentence are disapproved for the following reasons: (State reasons). He will be released from arrest and restored to duty."

(For effect of disapproval see sec. 479.)

Var. 4.—"The proceedings of the general court-martial in the foregoing case of _____, _____, U. S. Navy, are approved; the findings on the first and second specifications of the first charge and on the first charge are disapproved for the following reasons: (State reasons). The findings on the second and third charges and the specifications

thereunder and the sentence are approved. He will be released from arrest and restored to duty."

Var. 5.—"The proceedings, findings, and sentence of the general court-martial in the foregoing case of _____, _____, U. S. Navy, are approved. The U. S. S. _____ is designated as the place of confinement until an opportunity offers for transferring him to the naval prison, Portsmouth, N. H., or such other prison as may be designated, for the unexpired portion of his sentence."

Var. 6.—"The proceedings, findings, and sentence of the general court-martial in the foregoing case of Lieutenant _____, _____, U. S. Navy, are approved, and, in conformity with article 53 of the Articles for the Government of the Navy, the record is respectfully referred to the Secretary of the Navy for transmission to the President."

Var. 7.—"The proceedings, findings, and sentence of the general court-martial in the foregoing case of _____, _____, U. S. Navy, are approved. The execution of the sentence is held in abeyance with a view to withholding the execution entirely upon the successful completion of a probationary period of _____ (months) (year(s)). During this period _____'s commanding officer may order the execution of the sentence in accordance with the provisions of section 476, Naval Courts and Boards. _____ will be released from arrest and restored to duty."

Var. 8.—"The proceedings, findings, and sentence of the general court-martial in the foregoing case of _____, _____, U. S. Navy, are approved; but that portion of the sentence which involves confinement with corresponding accessories, except loss of pay, is remitted. The dishonorable (bad-conduct) discharge is remitted on condition that _____ during a period of _____ conducts himself in such a manner as in the opinion of his commanding officer warrants his further retention in the service; otherwise he is to be dishonorably discharged (discharged with a bad-conduct discharge) in accordance with the provisions of section 476, Naval Courts and Boards. The loss of pay (and allowances) is reduced to the loss of _____ dollars (\$_____) per month for _____ months. (_____ will be required to serve under his fraudulent enlistment.)"

Var. 9.—"The proceedings, findings, and sentence in the foregoing case of _____, _____, U. S. Marine Corps, are approved. However, the period of confinement adjudged is reduced to six (6) months; all the accessories are remitted except loss of pay which is mitigated to the loss of ten dollars (\$10) of his pay per month during confinement; the discharge is remitted on the condition that during confinement and for a period of six (6) months thereafter he conducts himself in such manner as, in the opinion of his commanding officer, warrants his retention in the service, otherwise he shall be discharged from the service by his commanding officer in accordance with the terms of his sentence at the expiration of the period of his confinement, or at any subsequent time during the period of probation. (Sec. 476.) The _____ is designated as the place of confinement."

Var. 10.—"The proceedings, findings, and sentence in the foregoing case of _____, _____, U. S. Navy, are approved, but that portion of the sentence which involves confinement is reduced to _____ months; all the other accessories of said sentence, except loss of pay, are remitted, and said loss of pay is reduced to the loss of _____ dollars (\$_____) per month. The dishonorable discharge is remitted on condition that _____ maintains a record satisfactory to his commanding officer during said confinement (during a period of _____), otherwise he is to be dishonorably discharged in accordance with the provisions of section 476, Naval Courts and Boards."

"The U. S. S. _____ is designated as the place for the execution of said much of the sentence as relates to confinement."

(Action cannot be taken in the case of a man convicted of *desertion in time of war* that will result in retaining him in the service.) (Sec. sec. 444.)

Var. 11.—"The prosecution offered in evidence * * *. This evidence was objected to by the accused on the ground that * * *. The court overruled the objection of the accused, and the witness testified that * * *. The convening authority is of opinion that the court erred in the above ruling and that such error operated to the substantial injury of the accused."

"The petition of the accused for a new trial having been granted, the proceedings, findings, and sentence in the foregoing case of _____, _____, U. S. Navy, are set aside."

Var. 12.—(See next page.)

Var. 12.—"The proceedings, findings, and sentence in the foregoing case of ———, ———, U. S. Navy, are approved. However, (the period of confinement, with corresponding accessories, is reduced to ——— months;) (the dishonorable discharge is mitigated to a bad-conduct discharge;) (and further,) if ———, during the first ——— months of his confinement, conducts himself in a manner satisfactory to his commanding officer, and it is not otherwise directed by the Secretary of the Navy during this period of confinement, the execution of the unexecuted part of the sentence will, at the expiration of the said ——— months of confinement, be held in abeyance with a view to withholding its execution entirely upon the successful completion of a probationary period of ——— months. During this probationary period ———'s commanding officer may order the execution of the unexecuted part of the sentence in accordance with the provisions of section 476, Naval Courts and Boards."

CHAPTER VII (1)

SUMMARY COURT-MARTIAL PROCEDURE

PART I. THE TRIAL

650. Cover page (2).—

N. J. A. 109.

RECORD OF PROCEEDINGS

OF A

SUMMARY COURT MARTIAL

To insure uniformity, forms furnished by the Judge Advocate General will be used exclusively.

SUMMARY COURT MARTIAL	
Jones, John	
(Full name, surname first)	
Seaman second class	
(Rate or rank)	
U. S. S. <i>Delaware</i>	
(Ship or station where tried)	
Hampton Roads, Va.	
(Location)	
July 15, 19—.	
(Date of trial)	
No remarks nor stamps of any kind to be placed below	
A. O. L. from:	—d—h—m
A. W. O. L. from:	—d—h—m
Assault	Obs. or prof. lang.
Asleep on watch	Resisting arrest
Breaking arrest	S. C.
C. to P.	Strkg. another in Navy
Disob. law ord.	Thrtg. lang.
Disresp. to S. O.	Theft
Drunkenness	VLGO
Falsehood	VLESN
Lv. sta. bfro. rlvd.	VL—O
Neglect of duty	
Plea	GUILTY
	Not guilty
Prev. Courts	No—D—S—G
BCD	L. P. \$—mos.
Conf. —mos.	Reduced to N. I. R.
Dep. Hb. —days	S. C. B. & W. —days
E. P. D. —days	
BCD remitted	Conf. red. to —
Conf. remitted	E. P. D. red to —
Dep. Hb. remitted	L. P. red. to —
E. P. D. remitted	S. C. B. & W. red. to —
L. P. remitted	
N. N. I. R. remitted	
Probation —mos.	
C. A.	I. S. I. C. S. O. P.
Appd.	Appd.
Disappd.	Disappd.
Reviewed by:	

See footnotes next page.

651. Precept (3).—

File——.

U. S. S. DELAWARE,
HAMPTON ROADS, VA.,
July 14, 19—.

From: Commanding Officer.

To: Lieutenant A—— R. K——, U. S. Navy.

Subject: Convening summary court martial.

1. (4) A summary court martial is hereby ordered to convene on board this vessel on Friday, July 15, 19—, or as soon thereafter as practicable, for the trial of such persons as may be legally brought before it.

2. The court will be constituted as follows (5):

Lieutenant A—— R. K——, U. S. Navy, senior member; Lieutenant J—— M. D——, Medical Corps, U. S. Navy; and First

(1) This chapter shows how a record of trial by summary court martial is made up. The object is to show each paper and entry in the order in which it should appear in the completed record. Each separate step in the trial is given a section number in this chapter to indicate clearly that it is a separate step and for ease of reference. The section numbers and headings given in this book are not to be repeated in the record of the court. Each of the separate steps so indicated obviously may not occur in any one trial.

For the general provisions governing making up records see secs. 500 to 525.

For the provisions of law governing the conduct of proceedings and the final dispositions of records see the 34th A. G. N.

(2) The cover page for a summary court-martial is furnished by the department (J. A. G.), and the form furnished is always to be used. If through inadvertence these forms should not be at hand, a copy should be made on typewriter, leaving the space below and to the left of the perforations measuring 7½ by 3½ inches.

(3) In case the record exceeds 20 pages in length an index similar to that in sec. 541 is to follow the cover page.

For explanation of what the precept is see sec. 345. As to showing of jurisdiction in the precept see secs. 327 to 341. A summary court martial can not try cases referred to it by other than its own convening authority.

The convening authority will deliver the precept to the senior member and, orally or in writing, notify the other members and the recorder of their appointment.

(4) Where the convening authority derives his authority from the Secretary of the Navy in accordance with article 26, A. G. N., the precept begins: "Pursuant to the authority vested in me by the Secretary of the Navy (Navy Department's file A17-11 (1) (310126) of June 2, 19—), a summary court martial is hereby ordered to convene within this command * * *."

(5) As to the personnel of the court see sec. 346.

The provisions of law relating to the membership of a summary court martial are given in the 27th A. G. N. The provisions of this article admit of a commissioned warrant officer being ordered as a member of a summary court martial.

For officers of the Naval Reserve, etc., as members see sec. 347.

It is advisable in all cases that at least one officer named as a member of a summary court martial have the qualifications of a member of a general court martial; see sec. 346. Where the convening authority finds it impracticable to comply with this provision he shall set forth the circumstances in a letter to the department, a copy of which shall be attached to each case tried by a court constituted otherwise.

For trial of a marine.—When a marine is to be tried by summary court martial one or more marine officers shall, if practicable, be detailed as members of the court.

Deficiency of members—How supplied.—When a trial by summary court martial is decided upon, and a sufficient number of officers of the proper rank to compose the court are not under the command of the convening authority, the latter shall request the senior officer present to detail the additional officers necessary. The senior officer

Lieutenant J—— H. R——, U. S. Marine Corps, members; and
 Ensign K—— R. A——, U. S. Navy, recorder.

(Signed) H—— A. N——, (6)

*Captain, U. S. Navy,
 Commanding U. S. S. Delaware.*

A true copy (7). Attest:

K—— R. A——,

*Ensign, U. S. Navy,
 Recorder.*

A (8)

652. Specification.—

Specification of an offense (9) preferred against John Jones, seaman second class, United States Navy.

Specification (10).—In that John Jones, seaman second class, U. S. Navy, attached to the U. S. S. Delaware, while so serving on board the U. S. S. Delaware * * * (11).

present shall, if practicable, comply with such request, in which case he shall, orally or in writing, notify the officers detailed.

Changes in court.—The provisions of sec. 348 apply to a summary court martial, but ordinarily, where *changes* are necessitated in the *composition* of a *summary court martial* a new precept should be issued.

Recorder.—For the general duties of the recorder before trial see secs. 351 to 353; during trial, secs. 400 to 402.

Summoning witnesses.—The recorder shall summon all witnesses both for the prosecution and the defense. The provisions of secs. 245 to 260 are applicable to the recorder of a summary court martial as well as to the judge advocate of a general court martial, except that the statutory authority to compel the attendance of civilian witnesses within the jurisdiction therein specified is not construed as extending to summary courts martial. The attendance of a civilian witness before a summary court martial is, therefore, optional and the subpoena should not include mention of a penalty for failure. Such witness can be subpoenaed by the recorder at Government expense only with the approval of the convening authority, and the approval of the Secretary of the Navy is necessary to subpoena such witness from a distance that would require such authority if the attendance of the witness were desired before a general court martial.

(6) For the officers empowered to order a summary court martial see the 26th A. G. N.

In his signature to the precept the convening authority should set forth the position which he fills which carries with it the power to convene the court.

"Commander of any vessel" construed.—The words "commander of any vessel", as used in article 26, A. G. N., have been construed to include a warrant officer when he is actually commanding a naval vessel, and this notwithstanding the fact that a warrant officer (noncommissioned) is not competent to serve as a member of a court martial.

The senior officer present, or the commander of a division, etc., as such, can not order a summary court martial. The precept must show the jurisdiction of the convening authority; it must show that the convening authority is the immediate commanding officer of the accused. An accused on detached duty may be tried by a summary court martial convened by the commanding officer of the command to which he is attached temporarily.

(7) The original precept shall be prefixed to the record of the first case tried thereunder, and, if more than one case be tried thereunder, shall be referred to in the record of each case subsequent to the first, and a copy prefixed.

(8) For marking of documents see sec. 508.

For order in which documents are prefixed or appended see sec. 507.

(9) **Variation.**—"Specifications of offenses * * *."

(10) If there be more than one specification they are numbered 1, 2, etc.

(11) The rest of the specification should follow the sample specifications in ch. II, but should not be laid under any charge. A separate specification shall be used for each distinct

Approved July 15, 19— (12).

To be tried before the summary court martial of which Lieutenant A—— R. K——, U. S. Navy, is senior member.

H—— A. N—— (13),

*Captain, U. S. Navy,
Commanding U. S. S. Delaware.*

B

653. Court meets.— (14)

U. S. S. DELAWARE,
HAMPTON ROADS, VA.,
Friday, July 15, 19—.

The court met at 10 a. m. (15).

Present:

Lieutenant A—— R. K——, U. S. Navy;

Lieutenant J—— M. D——, Medical Corps, U. S. Navy;

offense. Two or more specifications may be joined for a single trial, and must be so joined if the offenses are known before trial begins. It is improper, and will be ground for disapproval, to order a man tried in separate trials for separate offenses all of which were known before the first trial began. Such a procedure in effect multiplies the sentence that may be adjudged. In such a case additional specifications must be drawn, or if the punishment which a summary court martial may adjudge be deemed inadequate, the specifications should be withdrawn from the summary court martial and recommendation made for trial by general court martial.

The original specification (s) is (are) always prefixed to the record in each case.

Offenses triable by summary court-martial.—Article 26, A. G. N. makes triable by summary court martial offenses committed by enlisted men which an officer empowered to order a summary court martial "may deem deserving of greater punishment" than those prescribed in art. 24, A. G. N., "but not sufficient to require trial by a general court martial." So, when the nature of an offense charged is of such character that the punishment which a summary court martial is authorized to inflict is not adequate, the offender should be brought to trial before a general court martial unless it is impracticable to do so. In this connection it is to be noted that the offense of "fraudulent enlistment, and the receipt of any pay or allowance thereunder", was, by statute, declared an offense against naval discipline and made punishable by general court martial. Jurisdiction over this offense, therefore, is expressly limited to a general court martial.

(12) This date should *not* be anterior to that of the precept.

(13) **Additional offense.**—"Specification of an additional offense preferred against John Jones, seaman second class, U. S. Navy, intelligence of which did not reach the convening authority until this day (*or*, the —— instant).

"Specification: * * *."

"To be tried before the summary court martial, of which Lieutenant A—— R. K——, U. S. Navy, is senior member at the same time the accused is tried on the specification approved July 15, 19—.

"H—— A. N——,

"Captain, U. S. Navy, Commanding U. S. S. Delaware.
"C"

(14) If the case occupies more than one day the entry "First Day" is here made. Entries for succeeding days are as under a general court martial.

(15) For place of meeting and sessions see secs. 366 to 368. Hours for holding sessions of a summary court martial, however, shall be selected with a view to as little interference with the performance of routine duties as the administration of justice and the interests of the accused and the service permit.

The senior member reports when the court meets and when it adjourns, through routine channels to the convening authority.

First Lieutenant J—— H. R——, U. S. Marine Corps, members; and

Ensign K—— R. A——, U. S. Navy, recorder (16).
(17).

N—— O. P——, seaman second class, U. S. Navy, entered with the accused and reported as orderly (18).

654. Accused's counsel.—

The accused stated that he did not wish counsel.

The requirements of section 356, Naval Courts and Boards, were complied with (19).

(16) For the seating of the members, their duties, etc., see secs. 369 to 382. Members of a summary court martial are not excused from other duties.

Variation 1.—"Lieutenant J—— M. D——, Medical Corps, U. S. Navy, a member, was absent on account of illness (or other cause), and as the court was reduced below the number authorized by law, it adjourned until 10 a. m., tomorrow, Saturday."

Var. 2.—"The court, being reduced below the number authorized by law, informed the convening authority to that effect, and then took a recess until 11:30 a. m., the same date, when it reconvened. Present: Lieutenant A—— R. K——, U. S. Navy; First Lieutenant J—— H. R——, U. S. Marine Corps, members, Ensign K—— R. A——, U. S. Navy, recorder; and Ensign T—— S——, U. S. Navy, appointed a member by the convening authority, *vice* Lieutenant J—— M. D——, Medical Corps, U. S. Navy, relieved."

(Generally, in this latter case, it will be more simple to draw a new precept, adding thereto: "This court is hereby authorized and directed to take up such cases, if any, as may be pending before the summary court martial convened by my precept of ——, 19—, of which you are (or which —— ——, U. S. Navy, is) senior member.")

(17) *Variation.*—"The recorder introduced Y—— E. O——, yeoman second class, U. S. Navy, as reporter."

For appointment of reporter see sec. 361. The reporter and (or) interpreter must be sworn.

(18) For the duty of a guard or orderly see sec. 383; for appointment, sec. 363.

(19) The accused is entitled to counsel. For detailing an officer as counsel and his duties as such see sec. 357. For duties and prerogatives of a counsel in general see sec. 384.

Variation 1.—"The accused requested that Ensign L—— N——, U. S. Navy, act as his counsel. Ensign N—— took seat as such."

Var. 2.—"The accused was informed that his request to have Ensign L—— N—— act as his counsel was not approved for the reason that (*give reason*); he then requested that Lieutenant O—— P——, U. S. Navy, act as his counsel. Lieutenant P—— took seat as such. (*Or, He thereupon requested that counsel be detailed for him, and the court so notified the convening authority and took a recess until 1 p. m., the same date, when it reconvened. Present: All the members, the recorder, and the accused. Ensign ——, having been detailed as counsel for accused, reported as such.*)"

In case the request of the accused for certain counsel is refused, the reason for refusal must be set out.

In case counsel for the recorder is appointed, the procedure of sec. 559 is followed.

655. Precept read.—

The recorder read a copy of the precept hereto prefixed marked "A", original prefixed to the record in the case of ————, ————, U. S. ———— (20).

656. Accused makes no objection to members.—

The accused stated that he did not object to any member (21).

657. Members and recorder sworn.—

Each member and the recorder were duly sworn (22).

658. Accused acknowledges receipt of a copy of the specification.—

The accused stated that he had received a copy of the specification preferred against him on July 15, 19— (23).

659. Accused makes no objection to the specification.—

The recorder asked the accused if he had any objection to make to the specification.

The accused replied in the negative (24).

660. Specification examined (25).—

The court was cleared (26). The court was opened and all parties to the trial entered. The court announced that it found the specification in due form and technically correct (27).

661. Accused states he is ready for trial.—

The accused stated that he was ready for trial (28).

662. Witnesses separated.—

No witnesses not otherwise connected with the trial were present (29).

(20) At the first session of the first trial by a newly convened court the precept, and orders altering it, if any, must be read aloud by the recorder in court in the presence of the accused.

The precept may be modified as in the case of a general court martial. For procedure at succeeding trials see sections 386 and 560.

Variation.—"The recorder read the precept, original hereto prefixed marked 'A.'"

(21) In case of objection proceed as under a general court martial (secs. 561 and 563). For challenge in general see secs. 387 to 393.

(22) *Variation.*—"Each member, the recorder, and the reporter were duly sworn."

For the time and manner of giving oaths see appendix B. All persons present should stand while the court is being sworn.

The recorder first swears the members. (Art. 28 A. G. N.)

(23) For the manner in which the copy is sent the accused see sec. 564.

In case the accused does not make this acknowledgment proceed as under sec. 564.

Accused to be furnished copy of specification(s) before trial.—As soon as practicable after it has been decided to bring him to trial, the accused shall be furnished with a copy of the specification(s) preferred against him. After he has received this copy he shall, before he is brought to trial, be allowed a reasonable time to prepare his defense, but he may be tried at any time after he announces in open court that he is ready for trial. The record must show by admission of the accused or by other proof that at a stated time prior to the trial he received a copy of the specification(s) preferred against him.

(24) If objection is made proceed as under sec. 567.

(25) See sec. 398 for discussion of this duty.

(26) For when clearing the court may be dispensed with see sec. 373.

The recorder is not to be present in closed court.

(27) In case of the contrary finding proceed as under sec. 567.

(28) For postponement see sec. 399; proceed as under the variations of sec. 575.

(29) Witnesses are to be examined apart from each other, and are not to be present during the reading of the specifications. For variations see under sec. 576.

663. Specification read and accused arraigned.—

The recorder read the specification, original prefixed marked "B", and arraigned the accused as follows (30):

Q. John Jones, seaman second class, U. S. Navy, you have heard the specification preferred against you; how say you to the specification, guilty or not guilty (31)?

A. Not guilty (32).

664. Warning on plea (33).—

The accused was duly warned as to the effect of his plea and persisted therein (34).

665. Prosecution begins.—

The prosecution began (35).

(30) For arraignment see sec. 411.

(31) *Variation 1.*—" * * * you have heard the specifications preferred against you; how say you to the first specification, guilty or not guilty?"

"A. * * *

"Q. To the second specification, guilty or not guilty?"

"A. * * *"

Var. 2.—(In case of trial in joinder, see sec. 403.) "The recorder read the specification original prefixed marked 'B', and arraigned each of the accused as follows:

"Q. John Jones, seaman second class, U. S. Navy, you have heard the specification preferred against you; how say you to the specification, guilty or not guilty?"

"A. * * *

"Q. William Smith, fireman second class, U. S. Navy, you have heard the specification preferred against you; how say you to the specification, guilty or not guilty?"

"A. * * *"

(32) *Variation 1.*—"Guilty."

Var. 2.—"Guilty except as to the words * * *, to which words not guilty."

For procedure on plea of guilty see secs. 414 and 579.

Var. 3.—"The accused stood mute."

For pleas to the general issue see secs. 411 to 413.

For special pleas see secs. 404 to 410. For the procedure see sec. 579.

(33) In this supposititious trial this entry should not properly be made.

This entry is omitted (or ruled out of the form if such is used) when the accused has plead not guilty throughout.

(34) *Variation.*—" * * * and withdrew his plea of guilty and substituted therefor a plea of not guilty."

For change of plea see sec. 416; for rejection, sec. 417.

When the court takes action on the plea the procedure of sec. 581 shall be followed.

Example of proper warning by the senior member (in the case of an enlisted man): "Jones, it is my duty as senior member of this court to warn you that by your plea of guilty (or, of guilty to the second specifications, or, of guilty except as to the words * * *) you deprive yourself of the benefits of a regular defense (as to this specification (or, as to the parts of the specification) thus admitted). That is to say, you cannot after such a plea of guilty go ahead and prove that you are not guilty (on this specification, or, on parts of this specification). You may, however, introduce evidence of mitigating circumstances, in extenuation, or of previous good character. Do you understand what I have just explained? (In case of a negative answer the explanation must be amplified.) Understanding this do you persist in your plea?"

(35) *Variation.*—"The prosecution offered no evidence."

The prosecution properly offers no evidence only where the accused has plead guilty throughout, and the specifications set forth the facts so fully as to show all the circumstances of aggravation.

For the duty of the recorder to offer evidence after a plea of guilty see sec. 166.

In case the accused desires to make an admission in open court, proceed as in sec. 582.

666. Recorder as a witness for the prosecution.—

The recorder was called as a witness for the prosecution and was duly sworn (36).

Examined by the recorder (37) :

1. Q. (38). State your name, rank, and present station (39).

A. K—— R. A——, ensign, U. S. Navy, U. S. S. *Delaware*.

2. Q. It you recognize the accused state as whom.

A. * * *

3. Q. Are you the legal custodian of the * * *? If so, produce it (40).

A. I am; here it is.

* * * * *

Cross-examined by the accused (41) :

7. Q. * * *

A. * * *

* * * * *

Examined by the court (42) :

11. Q. * * *

A. * * *

* * * * *

Reexamined by the recorder (43) :

13. Q. * * *

A. * * *

* * * * *

The accused did not desire to recross-examine this witness (44).

Neither the recorder, the accused, nor the court desired further to examine this witness.

(36) For the order of the introduction of evidence, see sec. 266.

For a member or the recorder as a witness, see sec. 237.

In case a member testifies on any fact material to the issue he is *ipso facto* challenged. For the procedure in such a case see sec. 584.

The oath of the recorder or a member as a witness is the same as for any other witness. See app. E.

(37) For the order of examining witnesses see sec. 272; for the procedure see sec. 585.

For direct examination see secs. 273 to 279.

(38) Questions are to be numbered consecutively. If, however, the first examination of the witness is completed and later he is recalled, the questions begin anew. Questions and answers are paragraphed.

(39) In case of a civilian witness :

Variation.—“State your name, residence, and occupation.”

(40) For variations see under sec. 594; proceed as in sec. 594.

(41) For cross-examination see secs. 282 to 285. Except in pleas to the issue, admissions, and the statement of the accused, counsel for the accused (or the recorder when acting as such) may speak for the accused. The entry shall be made as though the accused himself were speaking.

(42) For examination by the court see sec. 287.

(43) Further examination of witnesses is to be allowed after examination by the court. For redirect and recross-examinations see sec. 286.

(44) The fact that the party whose turn it is to examine does not desire to ask any questions shall be recorded.

The witness said that he had nothing further to state (45).

The witness resumed his seat as recorder (46).

667. Examination of witness for prosecution.—A witness for the prosecution entered and was duly sworn.

Examined by the recorder:

1. Q. State your name, rate, and present station.

A. John W. Smith, boatswain's mate second class, U. S. S. *Delaware*.

2. Q. If you recognize the accused, state as whom.

A. As John Jones, seamen second class.

* * * * * (46a)

The witness said that he had nothing further to state.

The witness was duly warned and withdrew (47).

668. Prosecution rests.—

The prosecution rested (48).

669. Recess.—

The court then, at 11.30 a. m., took a recess until 1 p. m., at which time it reconvened (49).

Present: All the members, the recorder (50), the accused, and his counsel.

No witnesses not otherwise connected with the trial were present.

670. Defense begins.—

The defense began (51).

(45) When all parties indicate that they have no more questions to ask, the court will inform the witness that he took an oath to state everything within his knowledge in relation to the charges (specifications), and that he is now privileged to make any further statement necessary to fulfill his oath; that if he is not sure what the specifications are they will be explained to him.

Variation.—"The witness made the following statement: * * *"

After this statement, if any, further examination will be allowed in the discretion of the court.

(46) The recorder, a member, or the accused is not warned after testifying.

(46a) The examination is conducted the same as for the preceding witness.

(47) For warning to witnesses see sec. 297.

Variation.—"The accused (recorder) (a member) requested that the witness verify his testimony."

"The witness verified his testimony, was duly warned, and withdrew." (*Or*), "The witness corrected his testimony as follows: Page —, answer to question No. —, the words * * * changed to * * *." The testimony, thus amended, was read. The witness pronounced it correct, was duly warned, and withdrew." (*Or*) "At the request of the recorder the witness was directed to report tomorrow at — o'clock — m. (later in the trial when recalled), to correct or verify his testimony, was duly warned, and withdrew." For verification of testimony see sec. 295.

For manner of correcting testimony see sec. 296.

(48) This entry is omitted when the prosecution has offered no evidence.

(49) When the suspension of business is from one part of a day to another part of the same day it should be recorded as a recess; when from one day to another, as an adjournment.

In case of an adjournment the entries are as in secs. 568 and 569, so far as applicable.

(50) If there be a reporter his presence is also to be noted.

(51) *Variation*.—"The defense offered no evidence."

For change of plea see under sec. 596.

671. Examination of witness for defense.—

A witness for the defense entered and was duly sworn.

Examined by the recorder (53):

1. Q. State your name, rank, and present station.

A. Private Henry Johnson, U. S. Marine Corps, U. S. S. *Delaware*.

2. Q. If you recognize the accused, state as whom.

A. John Jones.

Examined by the accused (54).

3. Q. * * *

A. * * *

* * * * *

Cross-examined by the recorder:

7. Q. * * *

A. * * *

* * * * *

Reexamined by the accused:

11. Q. * * *

A. * * *

* * * * *

The recorder did not desire to recross-examine this witness.

Examined by the court:

15. Q. * * *

A. * * *

* * * * *

The accused did not desire to reexamine this witness.

Recross-examined by the recorder:

18. Q. * * *

A. * * *

* * * * *

Neither the accused, the recorder, nor the court desired further to examine this witness.

The witness said that he had nothing further to state.

The witness was duly warned and withdrew (55).

(53) The recorder asks the introductory questions of all witnesses.

(54) See note 37 *supra*.

(55) For variations see note 47 *supra*.

Contempt before a summary court martial.—The law is not construed as extending the authority to punish for contempt to a summary court martial or deck court. In case of contempt, therefore, the court shall report the facts to the convening authority for such further action as the latter may deem appropriate. For such contempt the convening authority may, if he deem it proper, order or recommend trial by court martial where the offender is a person in the service.

672. Accused as a witness.—

The accused was, at his own request, duly sworn as a witness in his own behalf (56).

Examined by the recorder:

1. Q. Are you the accused in this case?

A. I am.

Examined by the accused:

2. Q. * * *.

A. * * *

* * * * *

Cross-examined by the recorder (57):

10. Q. * * *

A. * * *

* * * * *

The witness said that he had nothing further to state.

The witness resumed his status as accused (58).

673. Defense rests (59).—

The defense rested (60).

674. Statement of accused.—

The accused made an oral statement the substance of which is appended marked "C" (61).

(56) When the accused is without counsel the following additional entry should here appear:

"The recorder stated to the court that the substance of section 359, Naval Courts and Boards, had been carefully explained to the accused."

For the accused as a witness see sec. 234.

For the privilege of the accused to testify see sec. 262.

(57) For cross-examination of accused see sec. 284.

(58) The accused is not warned.

(59) If the defense introduces witnesses as to character proceed as under sec. 600.

In case of rebuttal and surrebuttal proceed as under secs. 610 and 612. In such case the next entry in the record following this is: "The rebuttal began."

(60) This entry is omitted when the defense has offered no evidence.

(61) If the accused be without counsel, immediately following this entry should appear:

"The recorder informed the court that the substance of section 359, Naval Courts and Boards, had been carefully explained to the accused."

See sec. 424 for when statement and argument must be written, and exception in the case of a summary court martial. See sec. 423 for when they may be oral. When the accused makes a written statement the original thereof should be appended to the record, and it should be signed by the accused.

For statement of accused see sec. 419.

In case the statement is more than a mere request for clemency see sec. 417, and the procedure under sec. 614.

Variation.—"The accused did not desire to make a statement and submitted his case to the court."

For other variations see under sec. 614.

In case arguments are made proceed as in sec. 615.

675. Trial finished.—

The trial was finished (62).

676. Finding (63).—

The court was cleared (64).

The recorder was recalled and directed to record the following finding (65):

The specification proved (66).

677. Record of previous convictions (67).—

The recorder stated that he had no record of previous convictions, that the rate of pay of the accused in his present rating (rank) is \$48 a month and in his next inferior rating (rank) \$33 a month, and that he enlisted on March 4, 19—, to serve for four years, and gave as his date of birth April 1, 19— (69).

(62) In case the court decides to allow further evidence proceed as in sec. 617.

(63) For "Findings" in general see secs. 425 to 435.

(64) When the accused has plead guilty throughout, clearing the court to deliberate on the findings may be dispensed with.

(65) Or, "findings."

(66) Variation 1.—"The specification proved by plea."

Var. 2.—"The specification not proved, and the court does, therefore, acquit (fully acquit) (honorably acquit) (most fully and honorably acquit) the said John Jones, seaman second class, U. S. Navy, of the offense specified.

"The court was opened and all parties to the trial entered. The recorder read the finding(s) of the court."

(Should the accused be acquitted of all specifications the findings are read in open court, and the procedure of sec. 433 followed.)

For forms of acquittal see sec. 434.

Var. 3.—"The first specification proved.

"The second specification not proved, and the court does, therefore, acquit the said John Jones, seaman second class, U. S. Navy, of the offense specified.

"The court was opened and all parties to the trial entered. The court informed the accused that it had found the second specification not proved."

(This is in accordance with the provisions of sec. 433.)

Var. 4.—"The specification proved in part; proved except the words " * * ", which words are not proved (and for the excepted words the court substitutes the words " * * ", which words are proved)."

For finding "guilty in a less degree than charged" see sec. 430.

For other variations see sec. 619.

Var. 5.—"The first specification proved by plea. The second specification proved by plea."

(67) See sec. 620 for introduction of matter in aggravation, mitigation, and extenuation.

For previous convictions see secs. 436 to 441. The general rule is that record of previous convictions, in order to be admissible, must relate to the current enlistment, or to the current extension of enlistment of the accused.

Where accused has apparently completed his enlistment, or extension(s) thereof, the record should show that he is serving to make up time lost owing to his own misconduct.

(69) Variation.—"The recorder stated that he had record of previous conviction(s), * * *

"The court was opened, and all parties to the trial entered. The court announced that it was ready to receive the record of previous convictions.

"Such record having been submitted to the accused and to the court and there being no objection the recorder read from the current service record of the accused an extract(s) showing previous conviction(s), copy (copies) appended marked 'D.' " ("D1", "D2", etc.)

In case of objection proceed as under sec. 621 (17).

678. Sentence (70).—

The court was cleared.

The recorder was recalled and directed to record the sentence of the court as follows (71):

The court therefore sentences him, John Jones, seaman second class, U. S. Navy, to be confined for a period of two (2) months, and to lose twenty-four dollars (\$24) per month of his pay for a period of six (6) months, total loss of pay amounting to one hundred forty-four dollars (\$144) (72).

A—— R. K——,

Lieutenant, U. S. Navy, Senior Member.

J—— M. D——,

Lieutenant, Medical Corps, U. S. Navy, Member.

J—— H. R——,

First Lieutenant, U. S. Marine Corps, Member.

A—— R. K——,

Ensign, U. S. Navy, Recorder (73).

(73) For the provisions of law as to signing the record see the 52d A. G. N.

(70) For general provisions relating to the sentence see secs. 443 to 449.

Authorized punishments.—Summary courts martial are restricted in their sentences to the punishments specifically authorized in the 30th A. G. N. The effect of the provision of said act authorizing a court to “adjudge either a part or the whole, as may be appropriate, of any one of the punishments” enumerated in art. 30, is construed as permitting of the imposition of a sentence, under art. 30, involving either extra police duties, or loss of pay, or both, without other punishment. But only one, or parts of only one, of the punishments enumerated in the first six numbered paragraphs of the article may be imposed in any one sentence of a summary court martial. Particular care is to be taken that this last provision is not violated.

Phraseology to be employed in sentences.—The exact phraseology of art. 30 is to be followed in the sentence. Thus sentences involving confinement on bread and water or on diminished rations are illegal unless it is expressly provided that such confinement is to be “solitary”, although solitary confinement may be adjudged by itself without diminished rations. Similarly a sentence to “extra duties” instead of “extra police duties” is illegal. As the legal term of confinement is limited to “thirty days”, the exact phraseology should be employed in adjudging a sentence involving confinement for such maximum period. A sentence of “solitary confinement for one month”, for example, would be irregular and improper, as the article prescribes 30 days as the maximum, whereas one month might be in excess of the limit so fixed.

(71) For recordation and authentication of sentence see sec. 448. The sentence must be in the recorder’s handwriting.

(72) For loss of pay see sec. 446.

Sentences involving confinement.—The word “confinement” within the meaning of the 30th A. G. N. imports more than restriction to ship or station. It should be in the nature of an imprisonment. A restraint that includes the placing of a prisoner by himself where he can communicate with no unauthorized person nor with fellow prisoners, is solitary confinement, and not properly simple confinement. Article 30 A. G. N. provides for three kinds of physical restraint: (1) Solitary confinement, (2) confinement, (3) deprivation of liberty on shore on foreign station. The convening authority may extend the limits of confinement during working hours or at other times that he may deem expedient. He may even extend the limits of confinement to the limits of the ship or station, thus in effect making it restriction to the ship or station. No such power is given to the court itself, which must adhere strictly to the statutory form of punishment. A sentence of a court to “confinement or restriction to a ship or station” is not legal.

Variation 1.—“ * * * to be discharged from the U. S. naval service with a bad-conduct discharge.”

For confinement on bread and water see sec. 447.

Var. 2.—" * * * to lose twenty-seven dollars (\$27) per month of his pay for a period of two (2) months, total loss of pay amounting to fifty-four dollars (\$54), and to be discharged from the U. S. naval service with a bad-conduct discharge."

Var. 3.—" * * * to solitary confinement on bread and water for a period of eight (8) days, with full ration every third (3rd) day, and to lose fifteen dollars (\$15) per month of his pay for a period of two (2) months, total loss of pay amounting to thirty dollars (\$30)."

Var. 4.—" * * * to reduction to the next inferior rating (rank) and to lose sixteen dollars and fifty cents (\$16.50) per month of his pay for a period of four (4) months, total loss of pay amounting to sixty-six dollars (\$66)."

In case of *reduction in rating coupled with loss of pay* care shall be observed that the loss is based on the pay for the reduced rating. In general this form of sentence should not be used.

Extra police duties.—Except where the offender is serving in a receiving ship or at a shore station, sentences involving extra police duties are, as a general rule, undesirable, but this will not be construed as prohibiting the imposition of this sentence on board ships where circumstances render it desirable.

Var. 5.—" * * * to perform extra police duties for a period of one (1) month, and to lose fifteen dollars (\$15) per month of his pay for a period of three (3) months, total loss of pay amounting to forty-five dollars (\$45)."

Deprivation of liberty.—A sentence of "deprivation of liberty" is illegal, unless the words "on shore on foreign station" are added. The period shall not exceed three months. A possession of the United States is not a foreign station.

Var. 6.—" * * * to deprivation of liberty on shore on foreign station for a period of three (3) months."

Disrating for incompetency.—The 31st A. G. N. gives a summary court martial authority to disrate for incompetency. In the case of a person found to be incompetent, disrating is the only authorized action the summary court martial may take.

Var. 7.—" * * * to reduction to the next inferior rating (rank)."

Classification for disrating.—In order to insure uniformity in the reduction in rating of enlisted men by sentence of summary courts martial, the following classification of the petty officers and other enlisted men in the Navy, and of the noncommissioned officers and privates in the Marine Corps, arranged in each case to show their "next inferior rating (rank)", shall be followed. In case a man has been transferred from one branch to another or from one subdivision of a branch to another subdivision of the same branch, a subsequent reduction will be made in the subdivision of the branch to which he was transferred.

Revocation of the permanent appointment of a chief petty officer is not a reduction to the next inferior rating. It is a change in status, not in rating, and is therefore not a legal form for a summary court-martial sentence.

TABLE I.—Seaman branch

Class	Subdivisions and ratings			
	Boatswain's mates	Gunner's mates	Turret captains	Torpedomen
Chief petty officers.	Chief boatswain's mate.	Chief gunner's mate.	Chief turret captain.	Chief torpedoman.
Petty officers 1c.	Boatswain's mate 1c.	Gunner's mate 1c.	Turret captain 1c.	Torpedoman 1c.
Petty officers 2c.	Boatswain's mate 2c.	Gunner's mate 2c.	Gunner's mate 2c.	Torpedoman 2c.
Petty officers 3c.	Coxswain.	Gunner's mate 3c.	Gunner's mate 3c.	Torpedoman 3c.
(Below P. O.) 1c.	Seaman 1c.	Seaman 1c.	Seaman 1c.	Seaman 1c.
(Below P. O.) 2c.	Seaman 2c.	Seaman 2c.	Seaman 2c.	Seaman 2c.
(Below P. O.) 3c.	Apprentice seaman.	Apprentice seaman.	Apprentice seaman.	Apprentice seaman.

Class	Subdivisions and ratings		
	Quartermasters	Signalmen	Fire-control men
Chief petty officers.	Chief quartermaster.	Chief signalman.	Chief fire-control man.
Petty officers 1c.	Quartermaster 1c.	Signalman 1c.	Fire-control man 1c.
Petty officers 2c.	Quartermaster 2c.	Signalman 2c.	Fire-control man 2c.
Petty officers 3c.	Quartermaster 3c.	Signalman 3c.	Fire-control man 3c.
(Below P. O.) 1c.	Seaman 1c.	Seaman 1c.	Seaman 1c.
(Below P. O.) 2c.	Seaman 2c.	Seaman 2c.	Seaman 2c.
(Below P. O.) 3c.	Apprentice seaman.	Apprentice seaman.	Apprentice seaman.

TABLE II.—*Artificer branch*

Class	Subdivisions and ratings		
	Electrician's mates	Radiomen	Carpenter's mates
Chief petty officers.....	Chief electrician's mate.....	Chief radio man.....	Chief carpenter's mate.....
Petty officers, 1c.....	Electrician's mate, 1c.....	Radio man, 1c.....	Carpenter's mate, 1c.....
Petty officers, 2c.....	Electrician's mate, 2c.....	Radio man, 2c.....	Carpenter's mate, 2c.....
Petty officers, 3c.....	Electrician's mate, 3c.....	Radio man, 3c.....	Carpenter's mate, 3c.....
(Below P. O.), 1c.....	Seaman, 1c.....	Seaman, 1c.....	Seaman, 1c.....
(Below P. O.), 2c.....	Seaman, 2c.....	Seaman, 2c.....	Seaman, 2c.....
(Below P. O.), 3c.....	Apprentice seaman.....	Apprentice seaman.....	Apprentice seaman.....

Class	Subdivisions and ratings		
	Printers	Pattern makers	Ship fitters
Chief petty officers.....	Chief printer.....		Chief ship fitter.....
Petty officers, 1c.....	Printer, 1c.....	Pattern maker, 1c.....	Ship fitter, 1c.....
Petty officers, 2c.....	Printer, 2c.....	Pattern maker, 2c.....	Ship fitter, 2c.....
Petty officers, 3c.....	Printer, 3c.....		Ship fitter, 3c.....
(Below P. O.), 1c.....	Seaman, 1c.....	Seaman, 1c.....	Seaman, 1c.....
(Below P. O.), 2c.....	Seaman, 2c.....	Seaman, 2c.....	Seaman, 2c.....
(Below P. O.), 3c.....	Apprentice seaman.....	Apprentice seaman.....	Apprentice seaman.....

Class	Subdivisions and ratings	
	Sailmakers	Painters
Chief petty officers.....		
Petty officers, 1c.....	Sailmaker's mate, 1c.....	Painter, 1c.....
Petty officers, 2c.....	Sailmaker's mate, 2c.....	Painter, 2c.....
Petty officers, 3c.....	Sailmaker's mate, 3c.....	Painter, 3c.....
(Below P. O.), 1c.....	Seaman, 1c.....	Seaman, 1c.....
(Below P. O.), 2c.....	Seaman, 2c.....	Seaman, 2c.....
(Below P. O.), 3c.....	Apprentice seaman.....	Apprentice seaman.....

TABLE III.—*Artificer branch, engine-room force*

Class	Subdivisions and ratings	
	Machinist's mates	Water tenders
Chief petty officers.....	Chief machinist's mate.....	Chief water tender.....
Petty officers, 1c.....	Machinist's mate, 1c.....	Water tender, 1c.....
Petty officers, 2c.....	Machinist's mate, 2c.....	Water tender, 2c.....
Petty officers, 3c.....		
(Below P. O.), 1c.....	Fireman, 1c.....	Fireman, 1c.....
(Below P. O.), 2c.....	Fireman, 2c.....	Fireman, 2c.....
(Below P. O.), 3c.....	Fireman, 3c.....	Fireman, 3c.....
	Apprentice seaman.....	Apprentice seaman.....

Class	Subdivisions and ratings	
	Boilermakers	Molders
Chief petty officers.....	Chief boilermaker.....	Chief metal smith.....
Petty officers, 1c.....	Boilermaker, 1c.....	Molder, 1c.....
Petty officers, 2c.....	Boilermaker, 2c.....	Molder, 2c.....
Petty officers, 3c.....		
(Below P. O.), 1c.....	Fireman, 1c.....	Fireman, 1c.....
(Below P. O.), 2c.....	Fireman, 2c.....	Fireman, 2c.....
(Below P. O.), 3c.....	Fireman, 3c.....	Fireman, 3c.....
	Apprentice seaman.....	Apprentice seaman.....

TABLE III.—*Artificer branch, engine-room force*—Continued

Class	Subdivisions and ratings	
	Blacksmiths	Coppersmiths
Chief petty officers.....	Chief metalsmith.....	Chief metalsmith.
Petty officers, 1c.....	Blacksmith, 1c.....	Coppersmith, 1c.
Petty officers, 2c.....	Blacksmith, 2c.....	Coppersmith, 2c.
Petty officers, 3c.....
(Below P. O.), 1c.....	Fireman, 1c.....	Fireman, 1c.
(Below P. O.), 2c.....	Fireman, 2c.....	Fireman, 2c.
(Below P. O.), 3c.....	Fireman, 3c.....	Fireman, 3c.
.....	Apprentice seaman.....	Apprentice seaman.

TABLE IV.—*Special branch*

Class	Subdivisions and ratings		
	Yeomen	Storekeepers	Pharmacist's mates
Chief petty officers.....	Chief yeoman.....	Chief storekeeper.....	Chief pharmacist's mate.
Petty officers, 1c.....	Yeoman, 1c.....	Storekeeper, 1c.....	Pharmacist's mate, 1c.
Petty officers, 2c.....	Yeoman, 2c.....	Storekeeper, 2c.....	Pharmacist's mate, 2c.
Petty officers, 3c.....	Yeoman, 3c.....	Storekeeper, 3c.....	Pharmacist's mate, 3c.
(Below P. O.), 1c.....	Seaman, 1c.....	Seaman, 1c.....	Hospital apprentice, 1c
(Below P. O.), 2c.....	Seaman, 2c.....	Seaman, 2c.....	Hospital apprentice, 2c.
(Below P. O.), 3c.....	Apprentice seaman.....	Apprentice seaman.....	Apprentice seaman.

Class	Subdivisions and ratings	
	Buglers	Musicians
Chief petty officers.....	Chief bugle master.....	Bandmaster.
Petty officers, 1c.....	Bugle master, 1c.....	First musicians.
Petty officers, 2c.....	Bugle master, 2c.....	Musician 1c.
Petty officers, 3c.....
(Below P. O.), 1c.....	Bugler, 1c.....	Musician, 2c.
(Below P. O.), 2c.....	Bugler, 2c.....	Seaman, 2c.
(Below P. O.), 3c.....	Apprentice seaman.....	Apprentice seaman.

TABLE V.—*Commissary branch*

Class	Subdivisions and ratings— Commissary
Chief petty officers.....	Chief commissary steward.
Petty officers, 1c.....	Ship's cook, 1c; baker, 1c.
Petty officers, 2c.....	Ship's cook, 2c, or baker, 2c.
Petty officers, 3c.....	Ship's cook, 3c, or baker, 3c.
(Below P. O.), 1c.....	Seaman, 1c.
(Below P. O.), 2c.....	Seaman, 2c.
(Below P. O.), 3c.....	Apprentice seaman.

TABLE VI.—*Messman branch*

Class	Subdivisions and ratings	
	Stewards	Cooks
Nonrated men.....	Officer's steward, 1c.....	Officer's cook, 1c.
Do.....	Officer's steward, 2c.....	Officer's cook, 2c.
Do.....	Officer's steward, 3c.....	Officer's cook, 3c.
Do.....	Mess attendant, 1c.....	Mess attendant, 1c.
Do.....	Mess attendant, 2c.....	Mess attendant, 2c.
Do.....	Mess attendant, 3c.....	Mess attendant, 3c.

TABLE VII.—*Aviation branch*

Class	Subdivisions and ratings	
	Aviation machinist's mates	Aviation metalsmiths
Chief petty officers.....	Aviation chief machinist's mate.....	Aviation chief metalsmith.
Petty officers, 1c.....	Aviation machinist's mate, 1c.....	Aviation metalsmith, 1c.
Petty officers, 2c.....	Aviation machinist's mate, 2c.....	Aviation metalsmith, 2c.
Petty officers, 3c.....	Aviation machinist's mate, 3c.....	Aviation metalsmith, 3c.
(Below P. O.), 1c.....	Seaman, 1c.....	Seaman, 1c.
(Below P. O.), 2c.....	Seaman, 2c.....	Seaman, 2c.
(Below P. O.), 3c.....	Apprentice seaman.....	Apprentice seaman.

Class	Subdivisions and ratings	
	Aviation carpenter's mates	Aerographers
Chief petty officers.....	Aviation chief carpenter's mate.....	Chief aerographer.
Petty officers, 1c.....	Aviation carpenter's mate, 1c.....	Aerographer, 1c.
Petty officers, 2c.....	Aviation carpenter's mate, 2c.....	Aerographer, 2c.
Petty officers, 3c.....	Aviation carpenter's mate, 3c.....	Aerographer, 3c.
(Below P. O.), 1c.....	Seaman, 1c.....	Seaman, 1c.
(Below P. O.), 2c.....	Seaman, 2c.....	Seaman, 2c.
(Below P. O.), 3c.....	Apprentice seaman.....	Apprentice seaman.

Class	Subdivisions and ratings	
	Photographers	Aviation ordnancemen
Chief petty officers.....	Chief photographer.....	Aviation chief ordnanceman.
Petty officers, 1c.....	Photographer, 1c.....	Aviation ordnancemen, 1c.
Petty officers, 2c.....	Photographer, 2c.....	Aviation ordnancemen, 2c.
Petty officers, 3c.....	Photographer, 3c.....	Aviation ordnancemen, 3c.
(Below P. O.), 1c.....	Seaman, 1c.....	Seaman, 1c.
(Below P. O.), 2c.....	Seaman, 2c.....	Seaman, 2c.
(Below P. O.), 3c.....	Apprentice seaman.....	Apprentice seaman.

TABLE VIII.—*Marines*

Pay grades	Line							Staff		
	General			Special				A and I	Q. M.	P. M.
	Execu- tive	Gun- nery	Techni- cal	Avia- tion	Sig- nal	Mess	Band and field musics ²			
1	Ser- geant major	Master gunnery sergeant	Master techni- cal ser- geant	Master technical sergeant		Master techni- cal ser- geant	Master technical ser- geant ¹	Sergeant major	Q. M. sergeant	P. M. sergeant
2	First sergeant	Gunnery sergeant	Techni- cal ser- geant	Technical sergeant		Techni- cal ser- geant	{ Drum major ¹ Technical sergeant ¹	{ First ser- geant	Supply sergeant	Techni- cal ser- geant
3	Platoon sergeant		Staff sergeant	Staff ser- geant		Staff sergeant	None.....	Staff sergeant.		
4	Sergeant.....					{ Mess ser- geant, Chief cook Mess corpor- al, Field cook Assist- ant cook	{ Field music sergeant. Field music sergeant	{ Sergeant.		
5	Corporal.....						{ Field music corporal. Field music corporal	{ Corporal.		
6	Private first class.....						{ Field music first class Field music first class Private first class	{ Private first class.		
7	Private.....						{ Field music. Field music.	{ Private.		

¹ For master technical sergeant (band), drum major, and technical sergeant (band), the next inferior rating is the rank from which promoted.

² The ratings (ranks) of the U. S. Marine Band are as follows: Second leader, principal musician, first-class musician, second-class musician, and third-class musician.

679. Recommendation to clemency.—

In consideration of his previous good record, his youth, and short time in the service we recommend John Jones, seaman second class, U. S. Navy, to the clemency of the reviewing authority (74).

J—— M. D——,
Lieutenant, M. C., U. S. N., Member.
 J—— H. R——,
1st Lieut., U. S. M. C., Member (75).

680. Final entry.—

The court was opened and proceeded with the trial of ——
 ——, ——, U. S. Navy (76).

A—— R. K——,
Lieutenant, U. S. N., Senior Member.
 K—— R. A——,
Ensign, U. S. N., Recorder (77).

681. Documents appended: Statement of accused (78).—I respectfully call the attention of the court to my youth, short service, and previous good record. I send half of my pay each month home to my mother, who needs it badly. I request the court and the convening authority to be lenient with me.

Certified the true substance of the statement made by the accused.

Attest:

K—— R. A——,
Ensign, U. S. Navy, Recorder.

C

(74) For recommendation to clemency see sec. 450. A vague and indefinite recommendation is of no practical use. The facts on which it is based should be succinctly stated.

(75) The recorder never signs the recommendation to clemency.

For the provisions of law in this regard see the 51st A. G. N.

(76) *Variation 1.*—"The court then adjourned to await orders from the convening authority."

Var. 2.—"The court then adjourned to meet tomorrow at 10 a. m. (or as the case may be)."

(77) The final entry is authenticated by the signatures of the senior member and of the recorder.

The senior member transmits the finished record to the convening authority, and reports through routine channels to the convening authority the times of meeting and of adjourning.

The court is dissolved by the order of the convening authority. Such order may be oral. When so dissolved the court can not legally be reconvened.

(78) This is the statement made in sec. 674. This procedure is in accordance with the provisions of sec. 424.

For the procedure when a statement after a plea of guilty is more than a mere request for clemency see sec. 417(2).

Documents having to do with the precept or with the specifications are prefixed immediately following the precept or the specifications, as the case may be. All other documents not instruments of evidence, such as those set out in secs. 625 to 633, are appended immediately following the final entry of the record. Immediately following these come the exhibits.

For marking of documents see sec. 508.

For the order in which documents are prefixed or appended see sec. 507.

682. Exhibits (79).—

U. S. S. *Delaware*. Ran 6-20—. S2c.

While attached to the U. S. S. *Delaware* at Hampton Roads, Va., was granted liberty, to expire 20 June 19—, and failed to return. Left no effects. Intentions not known.

(Signed) H—— A. N——.

7-1— —. Declared deserter from 20 June 19—. Reward of \$50 offered. Arts. 1696-1698, N. R., 1920, complied with.

(Signed) H—— A. N——.

Deserted at Hampton Roads, Va., on 20 June 19—, on account of A. O. L.

U. S. S. *Delaware*.

(Signed) H—— A. N——,
Captain, U. S. Navy, Commanding.

A true copy. Attest:

K—— R. A——,
Ensign, U. S. Navy, Recorder.

Exhibit 1.

(80).

PART II. ACTION OF THE CONVENING AUTHORITY (82)**683. Action of the convening authority on the record (83).—**

U. S. S. *DELAWARE*,
HAMPTON, *ROADS*, VA.,
July 16, 19—.

The service record of John Jones, seaman second class, U. S. Navy, shows that he has served in the Navy four months and twelve days.

(79) The exhibits are appended in the order in which they were received in evidence. When the exhibit is an instrument of real evidence the procedure set forth in sec. 602 should be followed.

For securing exhibits to the record or forwarding separately see sec. 602.

(80) When the accused is sentenced to confinement exceeding 10 days on bread and water or on diminished rations the following *certificate of the senior medical officer* shall be appended after the exhibits: (See sec. 519.)

"U. S. S. *DELAWARE*,
Hampton Roads, Va., July 16, 19—.

"From an examination of John Jones, seaman second class, U. S. Navy, and of the place where he is to be confined, I am of opinion that the execution of the sentence would (not) produce serious injury to his health.

"B—— N. J——,
Lieutenant Commander, Medical Corps,
U. S. Navy, Senior Medical Officer on Board."

(82) If a revision be ordered, proceed like in a general court martial. A new court may sit in revision under the conditions of sec. 459. A record is not to be returned with a view to increasing the sentence.

(83) For action by the convening authority and reviewing authority in general see secs. 409 to 483.

During his current enlistment beginning March 4, 19—, he has committed no offense prior to the one for which he was tried in this case (84).

The proceedings, findings, and sentence in the foregoing case are approved, but in view of the above and the recommendation to clemency made by two members of the court, the loss of pay is reduced to the loss of ten dollars (\$10) per month of his pay for a period of six (6) months (85), total loss of pay amounting to sixty dollars (\$60).

H—— A. N——,
Captain, U. S. Navy,
Commanding U. S. S. Delaware (86).

(84) Synopsis of conduct spread upon record when bad-conduct discharge is adjudged.—In every case where a bad-conduct discharge has been imposed, it is the duty of the convening authority in acting upon the proceedings to spread upon the record a brief synopsis of the service of the person tried and the offenses committed by him during his current enlistment or current extension. Although not required, this may properly be done in other cases. (See sec. 438 for general rule as to admissibility of record of previous convictions.)

Variation.—"* * * shows that he has served in the Navy — years and — months, and is now in his second enlistment. During his current enlistment, beginning March —, 19—, he has committed the following offenses: March —, 19—, forty-eight hours over liberty; May —, 19—, clothes in lucky bag; June 18, 19—, absent from quarters; July —, 19—, shirking.

"The proceedings, finding(s), and, in view of the above, the sentence in the foregoing case are approved (or as the case may be)."

Variation.—"* * * shows that he has served in the Navy * * *, and is now in the first extension of his second enlistment. During his current extension, beginning * * *, he has committed the following offenses: * * *

"The proceedings, * * *

(For execution of the sentence see sec. 684, note 88.)

(85) Exercise of mitigating power.—In connection with the exercise of the power to mitigate it is to be noted that so much of a sentence as requires confinement to be solitary or on diminished rations may be remitted; or, in sentences involving bread and water, the frequency of full rations may be increased. Where the loss of pay is a certain amount per month, it should be mitigated by cutting down the amount, or the number of months during which it shall be lost, or both.

Variation 1.—"The proceedings, finding(s), and sentence in the foregoing case of ———, ———, U. S. ———, are approved."

Var. 2.—"The proceedings, finding(s), and sentence in the foregoing case of ———, ———, U. S. ———, are approved, but the period of confinement is reduced to ——— days. (* * * but in view of the recommendation to clemency, the loss of pay is reduced to the loss of ——— dollars (\$—) per month for a period of ——— (—) months.) (* * * but in view of the opinion of the medical officer, recorded above, the solitary confinement is remitted and the accused will be released from confinement and restored to duty.) (* * * the loss of pay is remitted.) (* * * the bad-conduct discharge is remitted on condition that ——— maintain a record satisfactory to his commanding officer during a period of ——— (—) months, otherwise he is to be discharged with a bad-conduct discharge in accordance with the provisions of section 476, Naval Courts and Boards.)"

Var. 3.—"The proceedings, finding(s), and acquittal in the foregoing case of ———, ———, U. S. ———, are approved."

In case of acquittal or disapproval of the sentence.—In cases where the accused has been acquitted by the court, or where the sentence has been disapproved by the convening

PART III. ACTION OF THE IMMEDIATE SUPERIOR IN COMMAND (87)

684. Action of the immediate superior in command on the record (88).—

U. S. S. TEXAS,
HAMPTON ROADS, VA.,
July 17, 19—.

The proceedings, finding, and sentence, as mitigated, in the foregoing case of John Jones, seaman second class, U. S. Navy, are approved (89).

_____,
Rear Admiral, U. S. Navy,
Commander, Battleship Division —, Battle Force, U. S. Fleet,
Immediate Superior in Command (90).

authority, the record of proceedings shall be submitted to the immediate superior in command in the same manner as though a sentence requiring action still remained.

Var. 4.—“The proceedings, findings, and sentence in the foregoing case of _____, _____, U. S. _____, are approved. In approving the sentence the convening authority has taken into consideration the policy of the Navy Department as set forth in sec. 446, Naval Courts and Boards, but for the following reasons believes that a deviation therefrom is warranted in this case: * * *.”

Var. 5.—“The proceedings and finding(s) in the foregoing case of _____, _____, U. S. _____, are approved. The sentence is disapproved for the following reasons (state reasons). The accused will be released from confinement and restored to duty.”

Var. 6.—“The proceedings, finding(s), and sentence in the foregoing case of _____, _____, U. S. _____, are disapproved for the following reasons (state reasons).”

Var. 7.—“The proceedings in the foregoing case of _____, _____, U. S. _____, are approved. The finding(s) and acquittal are disapproved for the following reasons (state reasons).”

(86) In case the convening authority is also the senior officer present add “and senior officer present.”

In this connection see the notes to sec. 684.

Letter of transmittal.—A letter is not required and should not be used in forwarding summary court-martial records of proceedings to an immediate superior in command. Any information which might be placed in a letter of transmittal should be included in the action of the convening authority.

(87) The entry in the following section is omitted when the convening authority is also the senior officer present. For the action of superior authority in general see secs. 469 to 484.

(88) Execution of sentence.—Article 32, A. G. N. provides for the execution of a summary court-martial sentence upon the approval of the “immediate superior in command” of the convening authority, except that where the convening authority is senior officer present his own approval is sufficient. Upon the approval, therefore, of the convening authority and except where the convening authority is senior officer present, upon the further approval of the “immediate superior in command”, any authorized sentence of a summary court martial, except a bad-conduct discharge in certain cases, may be carried into execution immediately. Authority of the Navy Department or of the Major General Commandant of the Marine Corps is required by the U. S. Navy Regulations before a bad-conduct discharge may be executed under conditions set forth in the said regulations. For *good conduct allowance* see sec. 470.

Power of higher reviewing authority.—The action of higher reviewing authority is limited to the sentence as mitigated by the convening authority. Such higher authority can not disapprove the mitigation and thus restore the original sentence.

Power to remit.—All powers of mitigation vested in the convening authority may be exercised by other reviewing authority.

Return of record by immediate superior in command.—An immediate superior in command can not properly return the record of a summary court martial directly to the

PART IV. PUBLICATION AND CHECKAGE

685. Publication (91).—

Published.

D—— C. B——,
Commander, U. S. Navy, Executive Officer.

court for action thereon in revision. The proper procedure when an immediate superior in command deems action by the court in revision necessary is for him to transmit the record to the convening authority with the suggestion that the convening authority revoke his action in the first instance and transmit the record to the court with an order for revision. Then, when the proceedings in revision have been acted upon by the convening authority, the record should be transmitted to the immediate superior in command for final action. In case of a record so returned, the court and the convening authority may, and if their sense of duty dictates, should, adhere to the action originally taken. A record is not to be returned with a view to increasing the sentence.

(88) *Variation 1*.—"The proceedings, finding(s), and sentence in the foregoing case of ——, ——, U. S. ——, are approved."

Var. 2.—"The proceedings and finding(s) in the foregoing case of ——, ——, U. S. ——, are approved. The sentence is disapproved for the following reason (state reason). The accused will be released from arrest and restored to duty.

(Or, The sentence is approved but the loss of pay is remitted.) (Or, The sentence is approved, but the period of confinement is reduced to —— days.)"

(89) *Variation 1*.—

"———,
*Captain, U. S. Navy, Commanding U. S. ——,
 Immediate Superior in Command."*

Var. 2.—

"———,
*Brigadier General, U. S. Marine Corps,
 Commanding —— Brigade, U. S. Marine Corps,
 Immediate Superior in Command."*

Var. 3.—

"Colonel, U. S. Marine Corps,
*Commanding Provisional Brigade Embarked upon and
 not a part of the Authorized Complement of the
 U. S. S. ——,
 Immediate Superior in Command."*

Var. 4.—(To be used only in case the convening authority is senior officer present.)

"A—— B. C——,
*Captain, U. S. Navy, Commanding U. S. S. ——,
 and Senior Officer Present."*

(91) Publication is to be to the command, and is to be made although the accused has deserted subsequently to the trial, or is not present through some other cause, and whether the trial has resulted in an acquittal or conviction.

Transcript from record.—Before a summary court-martial record is transmitted to the Judge Advocate General a brief transcript shall be taken therefrom (except in case of acquittal) and furnished to the officer of the deck and the executive officer for entry, respectively, in the ship's log and upon the service record of the man concerned. In the case of a marine the transcript shall be furnished to the marine's commanding officer. This transcript shall comprise—

- (1) The offense(s) and date(s) thereof.
- (2) The fact and nature of the trial with the date thereof.
- (3) The finding(s).
- (4) The sentence as approved.
- (5) Approval of convening authority and date thereof.
- (6) Approval of reviewing authority and date thereof.

If the said punishment be disapproved or mitigated subsequently by the department, an entry to that effect shall be made as soon as notice thereof is received. If bad-conduct discharge be included in the sentence, the final action in each case shall be similarly entered. The transcript and entries shall be authenticated by the signature of the commanding officer or his duly authorized representative.

686. Notation of checkage (92).—

Loss of pay adjudged has been entered on the pay accounts of this man and will be checked in accordance with the terms of the sentence as approved.

N——— W. D———,
Lieutenant Commander, S. C., U. S. Navy.

(92) Order to the supply officer.—Records of the proceedings of summary courts martial and deck courts shall show, over the signature of the supply officer having the accounts of the accused, that the loss of pay, if there be any adjudged and approved, has been checked. In order to enable the supply officer to make the necessary certificate, the commanding officer shall forward with the record the requisite order for the checkage; such order shall be in duplicate; one copy shall be sent immediately by the commanding officer *direct to the General Accounting Office, Audit Division*. The order shall contain the following information: Name, rate (rank), date of trial, offense (briefly stated), and sentence as finally approved. *If the offense is desertion or absence over leave or absence without leave, the dates of the beginning and ending of the unauthorized absence should be stated.* In the case of a marine, certificate shall be made by the commanding officer of the marine that the checkage has been entered in the service record book, or on the pay roll, as the case may be.

CHAPTER VIII

DECK COURT PROCEDURE

690. Instructions.—This chapter illustrates the form of the record of proceedings of a trial by deck court.

The record in all cases should be made on the Navy Department (J. A. G.) form N. J. A. 166x. This form is a printed card $3\frac{1}{2}$ by 8 inches in size and is furnished to all ships and stations by the department (J. A. G.). Should cards not be on hand and not immediately available from other commands a copy of the form shown in the following section should be made on the typewriter on heavy paper of the proper size.

Provisions of law governing deck courts are set forth in article 64, A. G. N. For revision see the sections dealing with that subject in chapters IV and VII.

The provisions of chapter IV, except where manifestly inapplicable, apply to deck courts; likewise those of chapter VII when not otherwise specially provided in this chapter.

The explanatory notes in this chapter are not set forth in the detail found in chapter VII, for the reason that deck court officers should be familiar with the procedure of summary courts martial and other sources of information required in deciding questions that may arise.

691. Deck court card (1).—

(Obverse)

RECORD OF DECK COURT, No. _____
(New series each calendar year)

_____, U. S. _____
(Name of accused, surname first)

_____, U. S. _____
is hereby ordered as Deck Court * to try the above-named
man for the following offense(s): SPECIFICATION: In
that _____
_____, U. S. _____

_____, U. S. _____
will act as recorder.

Approved: _____

_____, U. S. _____ Comdg.
I consent to trial by Deck Court as above:

_____, U. S. _____
Date of present enlistment _____ Ext _____

Pay: Present rating, \$ _____ N. I. R. \$ _____
Record of previous convictions:

N. J. A. 166 X

* See sec. 692 (3), var. 1, NCB. 1937, if commanding officer is deck court officer. In such case strike out the words "is hereby ordered as Deck Court to try" and substitute for them these words "Trial of."

Send direct to the office of the Judge Advocate General for additional copies of this form. For the sake of uniformity none should be printed on board ship.

Fill in this form on a typewriter equipped with elite type, if one is available.

(Reverse.)

Additional information necessary to the completeness of this record, and which has to be forwarded to the Department should be typewritten on thin bond paper uniform in size with this sheet, and attached by pasting on this area. Testimony, etc., is usually retained on board.

U. S. S. _____, _____, 19__

The accused was arraigned and pleaded as follows:

The following witnesses appeared for the prosecution:

The following witnesses appeared for the defense:

FINDING:

SENTENCE:

Previous conviction(s) (considered) (none)
(Proper deletion shall be made in the above entry to show whether previous convictions have been considered.)

_____, U. S. _____ Deck Court
Having examined accused and place of his confinement, I am of opinion that execution of sentence would
_____ produce serious injury to his health.

_____, Medical Corps, U. S. N.

_____, 19__

The sentence is approved and the accused informed this day.

_____, U. S. _____ Comdg.

Loss of pay adjudged has been entered on the pay accounts of this man and will be checked in accordance with the terms of the sentence as approved.

_____, U. S. _____

FORWARDED TO THE JUDGE ADVOCATE GENERAL
J. A. G. forms should be used exclusively

READ AND FOUND CORRECT _____

(1) This page shows a miniature of the deck court card furnished by the Department (J. A. G.), which is to be used in all cases.

692. Constitution (2).—

Record of Deck Court No. 117

Jones, John, S2c, U. S. N.

Lt. D—— E. F——, *U. S. N., is hereby ordered as Deck Court to try the above-named man for the following offense (3) :*

693. Specification (4).—

Specification.—In that John Jones, seaman second class, U. S. Navy, while attached to and so serving on board U. S. S. ——, having been granted liberty on March 25, 19—, until 10 a. m., March 26, 19—, did, upon the expiration of said liberty, fail to return to said ship, and did remain absent from his station and duty without leave until 10 p. m., March 26, 19—.

694. Recorder (5).—

R—— A. V——, yeo2c, *U. S. N., will act as recorder.*

(3) For the constitution and powers of a deck court see art. 64, A. G. N.

Who may act as deck court officer.—Officers shall not be ordered as deck court officers who are below the rank of lieutenant in the Navy or captain in the Marine Corps, and who have had less than six years' service as a commissioned officer, except that, in cases where there is no officer of such rank or of higher rank attached to the vessel, navy yard, station, or command, the commanding officer (if a commissioned officer) may act as deck court officer. An officer empowered to order deck courts may at his discretion designate himself as deck court officer, irrespective of his rank, if commissioned, and irrespective of the rank of other officers attached to his command.

(3) Variation 1.—“Trial of the above-named man for the following offense:”

(This variation to be used where the commanding officer is the deck court officer.)

Var. 2.—“Lieutenant D—— E. F——, U. S. Navy, is hereby ordered as deck court to try the above named man for the following additional offense, intelligence of which did not reach the convening authority until the — instant, at the same time the accused is tried on the specification preferred * * * SPECIFICATION: In that * * * .

Approved ——, 19—.

J—— J. K——,

Captain, U. S. Navy, Commanding.”

(The above is to be on paper the same size as the deck court card and is to be pasted thereto below the original specification or specifications. See sec. 652 under summary court martial re additional specifications and multiplicity of trials, which also applies to a deck court.)

(4) What specification must state.—The specification for a deck court should be brief, but in each specification it is necessary to set forth: (a) The name and rate of the accused; (b) the offense and date of commission thereof; (c) all material facts connected with the offense. While the specification for a deck court may be less formal than that for a summary or general court martial, yet the general principles set forth in ch. II, except such as refer to the *charge*, apply. In every case the convening authority should take care to see that the statement of facts of the alleged offense, as set forth therein, actually constitutes a legal offense, and that the offense is set forth clearly and explicitly, and is not left to be implied.

Offenses triable by deck court.—The jurisdiction of a deck court is expressly limited to “minor offenses.”

(5) The recorder may be any person under the command of the convening authority.

695. Convening authority (6).—

Approved March 27, 19—.

J—— J. K——, *Capt. U. S. N., Comdg.*

696. Consent to trial (7).—

I consent to trial by Deck Court as above.

JOHN JONES, *sea2c, U. S. N.*

697. Notation of previous convictions (8).—

Date of present enlistment, July 18, 19—. Pay, \$48. Pay in next inferior rating, \$33.

Record of previous convictions: 10-16—, aol 6hrs. DC, sent. 1p \$9.60. Appvd. by c. a. 10-18—.

698. The trial (9).—

Additional information necessary to the completeness of this record, and which has to be forwarded to the Department, should be typewritten on thin bond paper, uniform in size with this sheet and attached by pasting on this area. This does not apply to testimony, etc., which is usually retained on board.

U. S. S. TENNESSEE, *March 28, 19—.*

The accused was arraigned and pleaded as follows: Not guilty.

The following witnesses appeared for the prosecution: John Doe, s2c, U. S. N.

(6) By art. 64, A. G. N., deck courts may be ordered by any officer of the Navy or Marine Corps who may order a general or a summary court martial.

(7) *Consent of the accused necessary.*—When an enlisted man is brought before the deck court for trial he shall signify his willingness to be so tried by affixing his signature to a statement to that effect in the record. If he objects to being so tried, "trial shall be ordered by summary or general court martial as may be appropriate." (Art. 64, A. G. N.) But refusal of trial by deck court shall not be mentioned in the record of such latter court.

For the *right of appeal* of the accused see art. 64, A. G. N., and note 17 *infra*.

(8) Cases submitted for trial by deck court shall be accompanied by record of previous convictions, or by a statement to the effect that none such exist.

(9) The officer ordering the court shall determine when cases shall be brought to trial; but, whenever practicable, the trial shall take place within 48 hours after the offense is committed.

Not sworn.—The officer constituting a deck court is not sworn as he performs his duty under the sanction of his oath of office.

Duties.—The deck court officer conducts the trial. He summons witnesses, if any. He administers the oath to the recorder and witnesses and conducts the examination of the latter. He records the finding and sentence and signs the record. The deck court officer shall not be a witness either for the prosecution or for the defense.

The *recorder* shall be sworn to keep a true record of the proceedings of a deck court. He is not empowered to conduct any examination of witnesses. The deck court officer shall administer to the recorder the same oath as prescribed for the recorder of a summary court martial.

Each witness before a deck court must, prior to giving his testimony, be sworn by the deck court officer.

Procedure.—The general provisions laid down in ch. IV and the procedure as to arraignment, pleading, and conduct of a trial by summary court martial shall, in gen-

The following witnesses appeared for the defense: Richard Roe, slc, U. S. N. The accused.

699. Finding (10).—

Finding: The specification proved (11).

700. Sentence (12).—

Sentence: To lose \$16.00 per month of his pay for a period of two (2) months, total loss of pay amounting to \$32.00. Previous convictions considered.

State "Previous conviction considered", or "none" (as the case may be.) (13).

D——— E. F———, Lt., U. S. N. Deck Court.

701. Certificate of medical officer (14).—

Having examined accused and place of his confinement, I am of opinion that execution of sentence would ----- produce serious injury to his health.

—————, Medical Corps, U. S. N.

702. Action of convening authority (15).—

eral, and where not inconsistent with the present chapter, apply to deck courts. In taking down testimony adduced before a deck court, however, the facts established by the testimony only need be recorded, and the same shall be submitted to the convening authority on a separate sheet.

(10) See section 676 under summary courts martial, which applies to deck courts.

(11) *Var. 1.*—"The specification proved by plea."

Var. 2.—"The specification not proved and the court acquits the said John Jones, seaman second class, U. S. Navy, of the offense specified."

(In case of acquittal the deck court officer will inform the accused of the fact.)

(12) Punishments which may be imposed are, by the statute set out in art. 64, A. G. N., those of a summary court martial, except discharge, and that confinement or forfeiture of pay shall not exceed 20 days.

The provisions of sec. 678, where consistent with the statutory restrictions stated above, apply to deck courts. Delay in trial of an accused should be considered by a deck court officer in adjudging sentence.

For the general provisions relating to sentences see secs. 443 to 449.

The sentence to be in the handwriting of the deck court officer.—The sentence shall never be typewritten, but shall be in the handwriting of the deck court officer.

(13) For previous convictions see secs. 436 to 441. In case of objection to the record of previous convictions proceed as under sec. 621. When previous convictions are considered in determining the sentence, a note to that effect shall be entered upon the record.

(14) This must be filled out whenever confinement exceeding ten days on diminished rations or on bread and water is adjudged.

(15) The convening authority, or his successor in office, shall, after careful scrutiny of the record and of the testimony, if any be given, note his approval (or other action) with date and signature. After publication the sentence may be carried into effect. For action of the convening authority where the sentence as finally approved includes both reduction in rating and loss of pay, see secs. 446 and 683, footnote (85), var. 4.

When, in accordance with the provision of note 2 *supra* the officer empowered to order deck courts himself acts as deck court, the signature of such officer upon the record is sufficient without special notation of approval.

Power of reviewing authority.—See art. 64, A. G. N. For the power of the reviewing authority in general see secs. 474 to 483.

U. S. S. TENNESSEE, 3/30, 19—.

The sentence is approved and the accused informed this day.

J—— J. K——,
Captain, U. S. N., Comdg.

703. Certificate of supply officer (16).—

Loss of pay adjudged has been entered on the pay accounts of this man and will be checked in accordance with the terms of the sentence as approved.

S—— C——,
Lieut., S. C., U. S. N.

704. Disposition of record (17).—

Forwarded to the Judge Advocate General.

J. A. G. forms should be used exclusively.

Read and found correct ——— ———.

Publication.—Result of trial by deck court need be published to the accused only, but when publication can not be made to the accused, by reason of his absence, as by desertion, publication to the command is necessary in order to complete the record.

In case of *revision* a separate record is to be kept in accordance with the provision of secs. 458 to 468, so far as applicable. The record in revision shall be made on thin bond paper of the same size as the deck court card, and shall be pasted to it. Corrections in the record are not to be made in an informal manner.

(16) The procedure of sec. 686 relating to the order of the commanding officer to the supply officer and notification to the general accounting office must also be observed in the case of a deck court.

(17) **Disposition of record.**—The record of a deck court shall, when completed, be at once forwarded by the convening authority to the Judge Advocate General. Should the accused desire to make an appeal to the Secretary of the Navy within the period of 30 days, as prescribed by law, such statement as he may wish to make shall be submitted in writing and appended to the record of testimony, separately therefrom, and shall be forwarded therewith to the Navy Department (office of the Judge Advocate General). As the Secretary of the Navy reviews such appeal, no action by any intermediate authority is required.

Testimony to be forwarded only in cases of appeal.—Except in cases of appeal separate sheets containing the testimony of witnesses called in a deck court should not be forwarded to the department as a part of such records, as the testimony thus recorded is intended only for the guidance of the convening authority in his approval or disapproval of the finding and sentence.

For the manner of recording testimony see note 9 supra.

Transcript for log and record.—A transcript of a trial by deck court shall be made and furnished for the log and record of the man tried as in the case of a trial by summary court martial (sec. 685).

CHAPTER IX

MISCONDUCT

710. Definition.—In addition to determining whether disease or injury is in line of duty (1), a court of inquiry or a board has to determine whether it was or was not due to the misconduct of the person concerned. The rule for this is simple. Mere negligence or carelessness is not misconduct. Misconduct is a violation of law or regulation; in short, an act for which the person could have been court-martialed.

711. Suicide.—In cases of suicide the misconduct status depends upon whether or not the deceased was sane or insane at the moment of taking his life. If sane, death should be held to have been incurred as the result of his own misconduct. If insane, death should be held to have been incurred not as the result of his own misconduct.

If the deceased was sane, death should be held to have been incurred not in the line of duty. If the deceased was insane, the line of duty status is somewhat more involved. In such a case death should be held to have been incurred in the line of duty, provided his insanity was so incurred. Whether or not the insanity was incurred in the line of duty should be determined as laid down in the decisions referred to in note (1).

In determining whether or not the deceased was sane or insane the following rules apply: (1) All persons are presumed to be sane until this presumption is overcome by the evidence to the contrary. (2) The fact that a man takes his own life is evidence of insanity, but not enough, of itself, to overcome the presumption of sanity. It is an act that should be considered with the previous acts of the deceased in determining whether he was or was not in possession of his mental faculties. If the previous acts of the deceased indicate sanity, or if a motive for killing himself exists—as where by his own misconduct he has brought about a situation from which he thereby seeks to escape—the deceased should be regarded as having been sane at the

(1) The law governing line of duty is set forth in decisions of the Navy Department, there being no general rule, but each case being decided on its own merits. These decisions are published in court-martial orders and, in so far as the naval service is concerned, are binding on courts of inquiry and boards.

moment of taking his life. An earnest effort should be made by the court or board investigating the death to obtain all possible evidence as to the state of mind of the deceased just prior to taking his life. His state of mind will often be best evidenced by previous conduct, trouble, domestic or otherwise, considered in connection with brooding, preoccupation, and such like matters.

CHAPTER X

COURTS OF INQUIRY AND INVESTIGATIONS

INSTRUCTIONS AND PROCEDURE

720. Purpose.—Courts of inquiry and investigations, as the names signify, are primarily fact-finding bodies, and, unless specifically directed by the convening authority in the precept to express opinions or to make recommendations, will confine themselves to findings of fact. The proceedings of these bodies are in no sense a trial of an issue or of an accused person; they perform no real judicial function; they are convened solely for the purpose of informing the convening authority in a preliminary way as to the facts involved in the inquiry, and when directed, to aid him with opinions and recommendations; their conclusions are merely advisory. Convening authorities should remember that any action taken in a matter subsequent to its investigation is taken upon the initiative of the convening authority in his administrative capacity. The function of these bodies is merely to aid such officer in the performance of his administrative duties and not to relieve him of responsibility for his administrative acts.

A court of inquiry has power to compel the attendance of civilian witnesses, and should be convened or requested where testimony of civilians will likely be desired; the proceedings of a court of inquiry may under certain conditions be evidence before a court martial; otherwise there is no vital distinction in the power or effectiveness of a court of inquiry and an investigation, and the question which to convene is entirely within the discretion of the convening authority. Whether or not an investigation shall be by a board of officers or by one officer is entirely within his discretion, but in important cases where the facts are various and complicated, where there appears to be reason for suspecting criminality, or where crime has been committed with uncertainty as to the perpetrator, or where serious blame has been incurred without certainty on whom it ought chiefly to fall, a court of inquiry or a board of investigation affords the best means of collecting, sifting, and methodizing information for the purpose of enabling the convening authority to decide upon the necessity and expediency of further judicial proceedings.

721. By whom convened.—A court of inquiry may be convened in accordance with the articles for the government of the Navy. An investigation may be ordered by any officer empowered to convene

a court of inquiry, by the commander of a division or larger force afloat, and by the senior officer present afloat or ashore.

722. When to be convened.—If there is no doubt as to the facts of any particular incident or occurrence, and no reason why sworn testimony to facts fresh in the minds of witnesses should be preserved, a complete administrative report by the commander concerned will be fully as satisfactory as the record of a court of inquiry or of an investigation could be. But ordinarily, owing to legal sequels, the following should be covered by a court of inquiry or board of investigation:

723. Same: Loss of life from accident or under peculiar or doubtful circumstances.—In such cases it must be determined, if possible, whether the death was caused in any manner by the intent, fault, negligence, or inefficiency of any person or persons in the naval service or connected therewith. Where decedent was in the naval service or connected therewith the court or board will be required to give its opinion whether or not death was in the line of duty and due to misconduct (in this connection see Chapter IX), and will always find and record the facts as to the status of the deceased as to duty, authorized liberty, or otherwise. Unless the body has been lost the court of inquiry or board of investigation will perform the duties of an inquest. The advisability of having a medical officer on the court or board in such a case is apparent. After convening, the court or board will first proceed to the place where the body may be, carefully identify it, and note the surroundings if pertinent; the court or board will summon such medical witnesses as may be advisable, including always, if possible, the doctor who performed the autopsy if one was made, or a doctor who assisted in or witnessed it, and will ascertain from them the exact condition of the body and the medical opinion of the cause of death (1).

If homicide is indicated, the moment suspicion points towards any person, he should be accorded the rights of a defendant.

Where death resulted from a motor vehicle accident, the following facts, while not exhaustive, are nearly always pertinent: (a) speed of vehicle(s) involved; (b) condition of road; (c) condition of traffic; (d) traffic laws and regulations in force; (e) weather conditions; (f) mechanical condition of the vehicle(s), including brakes, steering gear, lights, tires, etc.; (g) sobriety of driver(s).

724. Same: Serious casualties to or deficiencies in ships.—A court of inquiry or board of investigation should be convened in any such case. A deficiency indicated in the battle efficiency of a combatant

(1) Where death occurred beyond reasonable reach of a naval court or board and was not the result of natural causes, a complete administrative report will be made.

ship of the Navy is more serious than a material deficiency and should be even more rigorously investigated.

In cases of grounding, collision, or structural failure, which involve accidental or intentional flooding of parts of a naval ship, the court or board will be directed to find and record the following data:

(a) Draft forward and aft and list of ship before and after damage. These drafts will usually have to be estimated from drafts recorded on departure at last port and on arrival at port after damage.

(b) General distribution and amounts of variable weights, particularly fuel and water, before damage.

(c) Statement of compartments flooded and of the rapidity of flooding of individual compartments if available.

(d) Cause of flooding of each compartment—that is, whether the flooding was due directly to damage to structure or due to deficiencies of structure or closures such as doors, hatches, vent closures, etc.

(e) The “material condition of readiness” in effect at the time of the casualty.

(f) Summary of steps taken to control damage and to correct list or trim.

(g) Failure, or especially effective performances, of material installation, such as flood control, doors, automatic closures, etc.

724½. Same: Accidental explosions in which ammunition or other explosives are destroyed.—A court of inquiry or board of investigation should be convened in any such case to determine the cause and responsibility for the accident, the extent of injuries to personnel, damages to property and the probable amount thereof, and all other attendant circumstances. Where death results from the explosion, the provisions of article 723 shall be complied with in so far as they are applicable.

The court or board will include in the record of proceedings the following information to the extent it is available:

(a) Date, time of day, place, and probable causes, with such other general information as may be pertinent.

(b) Kind of explosives or ammunition and the quantity involved.

(c) Time intervals, if measurable, between explosions.

(d) Statement of any barricades and effect upon them. Also report of the existence of any hills, forest, or other objects intervening between site of explosion and areas acted upon.

(e) Range and extent of damage. Where feasible, a map should be included in the report, upon which all or most of the following data may be shown; also, where available, photographs are desirable: (1) radius of complete destruction, namely, structures blasted to the ground

with very little left standing; (2) radius of structural damage beyond economical repair; (3) radius of repairable structural damage; (4) range of general glass breakage; (5) distance to which most missiles were projected, with kind and weight of important missiles; and (6) distance between locations if explosions occurred at more than one location. If afloat, distance between ships or other vessels affected and distances to nearby ships or vessels not affected.

(f) Approximate shape and dimensions of crater including depth and kind.

725. Same: Loss or stranding of a ship of the Navy.—(a) *Documentary evidence.*—The rough log book, commanding officer's night order book, and the chart by which the ship was navigated, or one of the same, must, if practicable, be produced in court.

(b) *Determination of ship's position.*—Investigation shall be made as to whether the proper chart provided by the Navy Department was used; whether the position of the ship at the last favorable opportunity was accurately determined by observation or otherwise, and if not, when it was last accurately ascertained. Some competent officer not attached to the ship, the loss or grounding of which may be the subject of the inquiry, shall be directed to work up the reckoning of that ship from the data obtained from her navigating officer, to enable the court to fix the true position of the ship at the time of her taking the ground. The officer appointed to perform this duty shall submit to the court in writing, attested by his signature, the result of his work, to the accuracy of which he shall be sworn. The position of the ship so determined shall be laid off on the chart by which she was navigated, as also her position when ashore, as determined by cross bearings taken from the log book. The rate and direction of the tidal stream and the time of tide shall be stated, if possible. The court shall also determine whether the courses steered and the distances run on the day before the ship grounded were correctly inserted in the log book; also when the error of the compass in use was last obtained.

(c) *Navigation if in pilot waters.*—If land was made, and the distance estimated before the ship struck, it is to be ascertained what steps were taken during the time it was in sight to correct the ship's run. The court shall rigidly investigate the manner in which the instructions contained in the regulations to officers commanding ships on approaching land were observed.

(d) The documents referred to in the preceding subparagraphs which were used in the inquiry, with an attested extract from the log commencing at least forty-eight hours before the ship touched the ground, if pertinent, are to accompany the record of the court.

(e) *Report of commanding officer.*—Whenever inquiry is made into the loss of a ship, the court shall call for the official report of the commanding officer of such ship, containing the narrative of the disaster, and this report shall be read in court in the presence of the commanding officer and of such of the surviving officers and crew as can be assembled, and shall be appended to the record. After these survivors have been sworn as witnesses, the following questions shall be put to them by the court:

(1) (To the commanding officer:) “Is the narrative just read to the court a true statement of the loss of the United States ship ——?”

2. (To the commanding officer:) “Have you any complaint to make against any of the surviving officers and crew of the said ship on that occasion?”

3. (To the surviving officers and crew:) “Have you any objections to make in regard to the narrative just read to the court, or anything to lay to the charge of any officer or man with regard to the loss of the United States ship ——?”

726. *Same: Collision with a merchant ship.*—In the event of a collision between a vessel of the Navy and a merchant vessel, a court of inquiry or a board of investigation shall be ordered to determine the responsibility for the accident, the extent of the injuries received, the probable amount of damages and all attendant circumstances. In the event that the collision or the resulting damage is of minor importance, or where the incident does not appear to involve possible disciplinary proceedings so as to warrant the convening of a board of investigation or a court of inquiry, an officer may be detailed to make an investigation in accordance with section 817. Further, in situations of very minor collisions and very minor collision damage, where there appears to be no controversy as to the facts of the occurrence, and there does not seem to be any necessity for the taking of testimony under oath of the witnesses, an administrative report will be sufficient. However, should developments thereafter require, a more complete or formal investigation may be ordered.

No officer, pilot, man or agent of the merchant vessel will be made an interested party, or afforded that status. If the circumstances of the situation permit, the master, crew and owner or agent of the merchant vessel, or of any other craft involved, shall, however, be notified that they will be afforded an opportunity to appear before the court or board or investigating officer and give evidence as to the occurrences. If the master, crew or agents of the merchant ship request that they be represented by an attorney, while giving their evidence in the matter, such representation shall be permitted, unless in the judgment of the court or board or of the investigating officer, there is reason for

objection to the presence of the particular representative involved. However, neither the attorney nor the witnesses from the merchant ship shall be present at the hearing while the witnesses from the Navy testify, nor shall they be furnished with a copy of the record of the board of investigation or court of inquiry, except that, upon request, a copy of such portion of the record as contains the testimony of the witnesses from the merchant ship may be furnished to them. The record shall indicate the appearance at the hearing of the attorney and the witnesses from the merchant ship, when they entered and when they withdrew.

Such attorneys, representing the interests of the merchant vessel or crew, are not permitted to examine witnesses or to participate in the proceedings in any manner whatever, other than to be present when their witnesses testify (C. M. O. 9, 1936, 26).

The record of any board of investigation or court of inquiry shall clearly designate the name, rank or rating, class of service and permanent address of each material witness to any collision. The testimony should also establish his length of service and marine experience. This procedure is intended to facilitate the identification of witnesses in the event that their testimony is required at some later time in litigation.

There shall be attached to the record of the board of investigation or court of inquiry, the original of any log books, original records, etc., the preservation of which is specified in articles 804, 804A, and 804B, *Navy Regulations*.

The advisability of conducting these proceedings in a closed court will be borne in mind, in order to safeguard the interests of the Government.

727. Precept.—The precept of a court of inquiry or investigation shall, in addition to naming the membership thereof and setting the time and place of meeting, state clearly and concisely the matter that is to be investigated and shall give explicit instructions what the report of the court or investigation shall include and any other matters of procedure deemed necessary. Neither the record of an investigation previously held in reference to the same subject matter nor official opinions of any kind shall be attached to or made a part of the precept. Such records or papers may, however, as a separate matter, be sent to the judge advocate or recorder for the purpose of assisting him to bring out all the facts in regard to the matter under investigation. The precept shall also specifically name as defendants and interested parties all persons who appear to be such from the outset. The convening authority should cause to be notified the complainant and persons who appear

to be defendants and interested parties from the outset of their right to be present during the investigation. A confirmation copy, signed by the convening authority, is required when the court or investigation is convened by dispatch.

In addition to the above, the precept, or letters to an investigating officer, shall refer to the statutory authority therefor.

Unless the power is expressly given by the convening authority in the precept, investigations will take no testimony under oath. When such power is given by the convening authority, all testimony shall be taken under oath.

728. Membership.—(a) A court of inquiry shall consist of not more than three commissioned officers as members and of a judge advocate.

(b) A board of investigation shall ordinarily consist of three officers as members.

(c) The composition of a court of inquiry or board of investigation, both in regard to rank of members and the corps to which they belong, shall be regulated by the circumstances to be investigated. The number of officers to constitute such bodies is within the discretion and judgment of the convening authority, who must consider the importance of the matter to be investigated and the availability of officers for the purpose. When important material under the cognizance of one of the material bureaus of the Navy Department, is involved, an officer especially trained or experienced in such material shall, whenever practicable, be appointed a member. In case the conduct or character of an officer may be implicated in the investigation, no member of the court or investigation shall, if practicable, be his junior in rank; and should such officer not be of the line, it is proper, if the exigencies of the service permit, that one or more officers of the corps to which he belongs be detailed for duty on the court or investigation. If it can possibly be

avoided, no officer shall be named as a member who has personal knowledge of the subject matter of the investigation. An officer who is ordered to duty as a member and who knows or has due reason to believe that he will be designated as a defendant, should immediately so advise the convening authority, and upon receipt of such information such officer should be relieved from duty on said body.

Whenever, in the judgment of the convening authority, it may be necessary or desirable, counsel to the judge advocate may be appointed.

A separate recorder need not be named on a board of investigation if there is no likelihood of there being any defendants. In such case the junior member acts as recorder.

(d) An investigation is composed of one officer.

729. Clerical assistance, interpreter, and orderly.—The provisions for courts martial with respect to clerical assistance and services of interpreters govern a court of inquiry or investigation. At the request of the judge advocate or recorder, the commanding officer of the immediate command within which the body is to sit shall direct an orderly to attend upon its meetings and execute its orders.

730. Rule of assembling.—Courts of inquiry and investigations shall assemble at the place and, as nearly as practicable, at the time named in the order convening them, but may adjourn, when desirable, to such place as may be convenient to the inquiry. The members thereof shall take their seats in the same order of rank or seniority as on courts martial; that is, the senior member at the head or center of the table and the other members in order of rank at his right and left alternately.

731. Duties of president or senior member.—Such officer shall administer the oath to the judge advocate or recorder, and the witnesses, preserve order, decide upon matters relating to the routine of business, such as recess, and may adjourn the court or investigation from day to day, at and to such hours as in their judgment will be most convenient and proper for the transaction of the business before them; but should an objection be made by any other member, a vote shall be taken with regard to it, and the decision of the majority shall govern.

732. Duties of the judge advocate or recorder.—(a) To summon all the witnesses required for the investigation and to lay before the court or investigation a list of them.

(b) To administer the oath or affirmation to the members.

(c) To record the proceedings and to make up the record.

(d) To conduct the examination of witnesses.

(e) To assist in systematizing the information received, to minute in the proceedings the opinion and recommendation, if called for, and to render such assistance as will enable the court or investigation to lay all the circumstances of the case before the convening authority in a clear and explicit manner.

(f) In conjunction with the president or senior member, to authenticate the proceedings by his signature.

(g) In general, he is the prosecutor and is responsible for bringing out all the facts.

In case the junior member of a board of investigation is acting as recorder (a recorder not having been designated in the convening order), he will not act in any sense as prosecutor, but the board will act in an unbiased manner to obtain all pertinent information available.

733. General rules and procedure.—(a) Courts of inquiry and investigations are usually cleared until the order constituting them and the instructions contained therein are read and the mode of procedure has been decided upon. The judge advocate or recorder does not withdraw when the court or investigation is cleared. Whether the investigation shall be held with closed or open doors must depend on the nature of the matter to be investigated, and, if not specified by the convening authority, must be decided by the court or investigation. The fact that the investigation is held with closed doors can not work to exclude parties to the inquiry and their counsel. The body may be cleared at any time for deliberation, whereupon the parties and their counsel will withdraw. Clearing the court may be dispensed with under the general principles of section 373.

Boards of investigation, although they shall collect material information from apparent or known facts, or from written evidence which they may possess, and shall record the declarations of persons examined before them, will not take testimony under oath except in important cases in which the precept expressly states that such board is authorized to administer oaths in accordance with the provisions of 5 U. S. Code 93, in which case all testimony shall be taken under oath.

When a board of investigation is not required by its precept to take testimony under oath, the record of such board can not be introduced as evidence in subsequent proceedings, except as provided in section 222. Therefore a wider latitude is permissible and the rules of evidence need not be strictly observed; the function of such board being solely to obtain information for the convening and higher authority. The same rule applies to an investigation not under oath made by an investigating officer or clerk.

(b) After the mode of procedure has been decided upon, the complainant and defendants, if any, must be called before the court and the precept read to them by the judge advocate or recorder.

(c) *Need not meet daily.*—Courts of inquiry and investigations need not meet from day to day, but have power to adjourn for such period as may be necessary without requesting permission of the convening authority. When the suspension of business is from one part of a day to another part of the same day it should be recorded as a recess; when from one day to another, as an adjournment.

(d) *Challenges.*—Parties to an inquiry have the right to challenge any member, as set forth in sections 561 and 562.

(e) *Members must determine according to the evidence.*—The oath taken by the members of a court of inquiry requires them to examine and inquire “according to the evidence” the matter before them.

(f) *Witnesses shall be examined apart from each other.*—It is improper for witnesses, unless they are otherwise connected with the inquiry, to hear the testimony of other witnesses. The court shall inform each witness, other than a member of the court, the judge advocate, or a party to the inquiry, immediately after the witness has been sworn, of the subject matter of the inquiry. *All witnesses, except the judge advocate, a member, or a party to the inquiry, shall be warned, after testifying, in accordance with the provisions of section 297.* While it is not legally necessary that defendants should be warned that what they say may be used against them (when a witness under oath), it is desirable that in practice this be done and that they be further informed of their rights, particularly when they are without counsel.

(g) *Summoning and examination of witnesses.*—The summoning and examination of witnesses is conducted in the same manner as before a court martial, except that a board of investigation and an investigation can not compel the attendance of civilian witnesses. The attendance of such witnesses, therefore, is optional, and the subpoena for same should not include mention of a penalty for failure. Such witnesses can be subpoenaed by the recorder at Government expense only with the approval of the convening authority, and the approval of the Secretary of the Navy is necessary to subpoena such witnesses from a distance which would require such authority if the attendance of the witnesses were desired before a general court martial.

The judge advocate or recorder first calls witnesses; the complainant, if there be one, is then entitled, when the judge advocate or recorder rests his case, to introduce evidence; defendants may then introduce evidence, and after they rest their cases, interested parties

may call witnesses. If, at the end of the testimony of the above witnesses, the court or investigation desires further information, it may call witnesses. All witnesses shall be examined in accordance with court martial procedure; that is, the order of their examination shall be direct, cross, redirect, and recross.

(h) No business other than an adjournment shall be transacted unless a majority of the members be present, except when the convening authority so orders.

(i) No member shall fail in his attendance at the appointed times unless prevented by illness or some insuperable difficulty, ordered away by competent authority, or excused by the convening authority, except that a short temporary absence may be allowed by the president or senior member of the court or investigation; nor shall a member leave the vicinity of the assembly place unless authorized to do so by the convening authority or his superior.

In case of the absence of a member, the senior officer shall inform the convening authority of the fact, and also of the reasons for the absence, if known to him, in order that the vacancy may be filled, if deemed necessary.

A member absent during the investigation of any matter or case shall not vote upon a decision with regard to it unless, if necessary to arrive at a conclusion, a reinvestigation takes place in the presence of that member and of the parties.

734. Parties.—(a) *Complainant.*—When an inquiry is ordered into facts in connection with accusation or complaint made by any person to the convening authority, such person is known as the complainant and may be allowed to remain in court during the inquiry and make suggestions.

(b) *Defendant.*—A person whose conduct is the subject of investigation is a defendant. Should it appear at any time that any person in the naval service or employ not named as a defendant in the precept becomes involved in such a way that an accusation against him may be implied, it is the duty of the court to inform such person through official channels that he is a defendant.

In informing a person that he is a defendant, he shall be notified of the gist of the evidence that tends to implicate him and instructed that he will be accorded the rights of an accused before a court martial, namely, the right to be present, to have counsel, to challenge members, to introduce and cross-examine witnesses, to introduce new matter pertinent to the inquiry, to testify or declare in his own behalf at his own request, and to make a statement and argument. He has the right of any witness to refuse to answer incriminating

or degrading questions. Conversely, should it become apparent at any time that a person who has been designated a defendant is involved in an insignificant degree, the court should inform him that he is no longer a defendant.

No person outside of the naval service or employ may be named a defendant.

(c) *Interested party.*—Any person, not a complainant or defendant, who has an interest in the subject matter of the inquiry may, within the discretion of the convening authority, be designated in the precept as an interested party. (See sec. 726.) Should it at any time during the course of the inquiry appear that any person not named in the precept has such interest, he may, within the discretion of the court, be designated an interested party. In either case the person shall be notified that he will be allowed to be present during the inquiry, examine witnesses, and introduce new matter pertinent to the inquiry in the same manner as a defendant. The granting of these privileges to such a person may, but need not be, at his own request. A person granted the privileges of an interested party may be called as a witness, but, of course, can not be required to incriminate himself. The foregoing provisions do not apply to collision cases, which are governed by section 726.

It should be borne in mind that the status of a party to the inquiry is at all times subject to change, depending on the evidence adduced. Thus, a person not named in the precept might be designated an interested party by the court during the course of the inquiry, at some later stage of the proceedings become implicated in the matter under investigation in such a way as to make him a defendant thereto, and subsequently cease to be a defendant because involved in an insignificant degree.

If the rights of a defendant be not accorded when they should be, the court of inquiry or investigation, so far as concerns the person denied his rights, will be held of no evidential effect. *This is one of the most important rules to be observed.*

(d) *Right to counsel.*—The complainant, defendants, and interested parties before a court of inquiry or investigation have the right to the aid of counsel. Should a defendant waive his right to counsel, the president or senior member shall warn him that sworn testimony is admissible as evidence before courts martial, as provided in the 60th A. G. N. or the general rules of evidence, and again advise him to provide himself with counsel, informing him that counsel will be assigned him should he so desire. A statement that this section has been complied with shall be entered upon the record of proceedings in any case where an enlisted man so involved waives this right.

735. Deliberations.—(a) After all the evidence is in and statements and arguments, if any, have been received, the court of inquiry or investigation should be cleared, the proceedings read over, and the instructions contained in the convening order carefully examined and scrupulously followed.

After mature deliberation on the testimony recorded during the inquiry, the body shall proceed to report the facts, and, if so directed, an opinion or conclusion drawn from the facts and a recommendation as to what further action, if any, should be had. (A fact is an action; a thing done; a circumstance.) Unless an opinion is called for, care shall be taken to state only facts. The body must weigh the evidence and include in its finding of facts those things which it believes the evidence establishes to have been done, and nothing further. If the body recommends that further proceedings be had in the matter, it should state in its recommendation the name of the person or persons against whom, and the specific matter upon which, the proceedings should be conducted, together with the nature of the proceedings.

(b) The report of the court or investigation shall include a full statement of injuries received by personnel and damages to material and an opinion regarding line of duty and misconduct in accordance with section 723.

(c) If a member does not concur with the findings, opinion, or recommendations of the court or investigation, he shall append his reasons for dissent and subscribe his name thereto. The report shall be based on the opinion of the majority.

(d) It is held to be a breach of discipline on the part of any member to disclose or publish the opinion, findings, or recommendation of the court or investigation, or of the individual members thereof, without the sanction of the convening authority.

(e) Ordinarily an opinion should not be requested of an investigation in view of the fact that but one officer constitutes such investigation.

(f) The proceedings of a court of inquiry or investigation must be authenticated by the signature of the president and the judge advocate, but all the members should sign the record. In the case of a minority report, the respective reports must be signed by the concurring members of the court and the record must be authenticated by the signatures of the president and judge advocate. The record of proceedings is then to be submitted to the convening authority for his consideration, after which the court may adjourn temporarily to await his further instructions.

736. Reviewing authority.—(a) Court of inquiry and investigation records are reviewed by the convening authority and by those officers,

if any, through whom the record is forwarded (the record is forwarded through regular channels), who shall take such further action upon the matters disclosed by the inquiry as they may deem appropriate, and shall submit the proceedings to the Judge Advocate General. If any disciplinary action is taken, or will be taken by the convening or reviewing authority, a statement thereof shall be made in his action.

(b) The reviewing authority may record his disapproval of the proceedings in whole or in part or may return the record to the convening authority with recommendation to the latter to change his action or to have the court revise the record. Such recommendation, however, is purely advisory. The general principles of section 473 apply.

(c) In case of failure to accord the rights of a defendant to a person who should properly have been made such, the convening authority should return the record to the court or investigation for revision, and direct that in such revision these rights be accorded. If for any reason this cannot be accomplished the record of proceedings shall be referred to such person for a statement before any action on the proceedings is taken by the convening authority or other reviewing authority which reflects adversely upon such person's official record. Such statement shall be attached to and made a part of the record of proceedings.

(d) The proceedings of a court of inquiry or investigation may be revised as often as the convening authority may deem necessary. New evidence may be received and recorded on every such revision, and any of the previous witnesses may be recalled and reexamined with a view to eliciting further information, provided that all parties to the inquiry are afforded an opportunity to be present.

737. Dissolution.—The court is dissolved by order of the convening authority.

738. The remainder of this chapter shows how the records of proceedings of courts of inquiry and investigation are made up. The object is to show each paper and entry in the order in which it should appear in the completed record. Each separate step in the proceedings is given a section number to indicate clearly that it is a separate step and for ease of reference. The section numbers and headings given in this book are not to be repeated in the record of the court or investigation. Each of the separate steps so indicated obviously may not occur in any one inquiry. The general provisions of Chapter V, governing making up of records shall be observed.

COURT OF INQUIRY PROCEDURE

739. Indorsement of the reviewing authority.—

UNITED STATES FLEET, BATTLE FORCE

U. S. S. CALIFORNIA, Flagship

SAN PEDRO, CALIF.,

March 10, 19—.

The proceedings, findings, opinion, and recommendation of the court of inquiry in the attached case and the action of the convening authority thereon are approved.

C—— C. B——,

*Admiral, U. S. Navy,**Commander, Battle Force, U. S. Fleet.*

740. Indorsement of the convening authority.—

UNITED STATES FLEET

BATTLESHIPS, BATTLE FORCE

U. S. S. WEST VIRGINIA, Flagship

SAN PEDRO, CALIF.,

March 9, 19—.

The proceedings, findings, opinion, and recommendation of the court of inquiry in the attached case are approved.

Lieutenant X—— Y. Z——, U. S. Navy, will be brought to trial by general court-martial on the charges recommended by the court.

Pending receipt of the general court-martial record in the foregoing case, the question of whether or not disciplinary action will be taken against Lieutenant Z—— Y. X——, U. S. Navy, is held in abeyance.

E—— C. K——,

*Vice Admiral, U. S. Navy,**Commander, Battleships, Battle Force,**U. S. Fleet.*

741. Copy of findings, opinion, and recommendation (1).

(1) This copy is not signed and is not to include a minority report, if one be made. It is to be prefixed to the entire record so that it shall be on top when the record is submitted to the convening authority.

742. Cover page.—

RECORD OF PROCEEDINGS

OF A

COURT OF INQUIRY

CONVENED ON BOARD THE (2)

U. S. S. NEW MEXICO

BY ORDER OF

COMMANDER BATTLESHIPS, BATTLE FORCE,
UNITED STATES FLEET

To inquire into alleged misconduct on the part of
Lieutenant X——— Y. Z———, U. S. Navy
February 23, 19— (3)

(2) *Variation.*—

“CONVENED AT
THE NAVY YARD, MARE ISLAND, CALIFORNIA,
BY ORDER OF
THE SECRETARY OF THE NAVY”

(3) This is the date of first convening for the inquiry.

743. Index for lengthy case.—An index is required whenever a record exceeds 20 pages in length.

744. Precept.—

File ———.

UNITED STATES FLEET
BATTLESHIPS, BATTLE FORCE
U. S. S. WEST VIRGINIA, Flagship

SAN PEDRO, CALIF.,
February 21, 19—.

From: Commander, Battleships, Battle Force.

To: Lieutenant Commander A—— B. C——, U. S. Navy, U. S. S.
New Mexico.

Via: Commanding officer, U. S. S. *New Mexico*.

Subject: Court of inquiry to inquire into alleged misconduct of
Lieutenant X—— Y. Z——, U. S. Navy.

1. A court of inquiry, consisting of yourself as president and of Lieutenant Commander D—— E. F——, U. S. Navy, and Lieutenant G—— H. I——, U. S. Navy, as additional members, and of Lieutenant J—— K. L——, U. S. Navy, as judge advocate, is hereby ordered to convene on board the U. S. S. *New Mexico* at 10 o'clock a. m., on Wednesday, February 23, 19—, or as soon thereafter as practicable, for the purpose of inquiring into certain complaints made by Commander R—— S——, U. S. Navy, alleging misconduct on the part of Lieutenant X—— Y. Z——, U. S. Navy, in the following particulars: (*Here are stated clearly and concisely the allegations to be inquired into.*)

2. It is directed that the court notify Commander R—— S—— of the time and place of meeting of the court and that he will be a party to the inquiry in the status of complainant and will be accorded the rights of such party in accordance with the provisions of Naval Courts and Boards.

3. It is directed that the court notify Lieutenant X—— Y. Z—— of the time and place of meeting and that he will be a party to the inquiry in the status of defendant and will be accorded the rights of such party in accordance with the provisions of Naval Courts and Boards.

4. The attention of the court is particularly invited to section 734, Naval Courts and Boards.

5. The court will thoroughly inquire into the matter hereby submitted to it and will include in its findings a full statement of the facts it may deem to be established. The court will further give its

opinion as to whether any offenses have been committed or serious blame incurred, and, in case its opinion be that offenses have been committed or serious blame incurred, will specifically recommend what further proceedings should be had.

6. The commanding officer of the U. S. S. *New Mexico* is hereby directed to furnish the necessary clerical assistance for the purpose of assisting the judge advocate in recording the proceedings of this court of inquiry. (4)

E—— C. K——,
Vice Admiral, U. S. Navy,
Commander Battleships, Battle Force,
U. S. Fleet.

(4) *Variation 1.*—(To inquire into the circumstances attending a death.)

"DEPARTMENT OF THE NAVY,
"Washington, February 4, 19—.

"From: The Secretary of the Navy.

"To: Captain A—— B. C——, U. S. Navy, navy yard, —— ———.

"Via: Commandant.

"Subject: Court of inquiry to inquire into the circumstances attending the death of
X—— Y. Z——, late fireman first class, U. S. Navy.

"1. A court of inquiry, consisting of yourself as president, and of Commander D—— E. F——, U. S. Navy, and Lieutenant Commander G—— H. I——, Medical Corps, U. S. Navy, as additional members, and of Lieutenant J—— K. L——, U. S. Navy, as judge advocate, is hereby ordered to convene at the navy yard, ——, at 10 o'clock a. m., on Monday, February 6, 19—, or as soon thereafter as practicable, for the purpose of inquiring into the circumstances attending the death of X—— Y. Z——, late fireman first class, U. S. Navy, attached to the U. S. S. ——.

"2. The court will thoroughly inquire into the matter hereby submitted to it and will include in its findings a full statement of the facts it may deem to be established, and will give its opinion and recommend further proceedings as provided in section 735, Naval Courts and Boards.

"3. The attention of the court is particularly invited to section 734, Naval Courts and Boards.

"4. The commandant of the navy yard, ——, ——, is hereby directed to furnish the necessary clerical assistance for the purpose of assisting the judge advocate in recording the proceedings of this court of inquiry.

"———, "

"Secretary of the Navy."

Var. 2.—(To inquire into the condition of a vessel.) " * * for the purpose of inquiring into unsatisfactory conditions reported to exist on board the U. S. S. —— in the following respects: (*Here state clearly and concisely the respects in which conditions are alleged to be unsatisfactory and are to be investigated.*)

"2. It is directed that the court notify Commander ——, U. S. Navy, and Lieutenant ——, U. S. Navy, of the time and place of meeting of the court and that they will be parties to the inquiry in the status of defendants, and will be accorded the rights of such parties in accordance with the provisions of Naval Courts and Boards.

"3. The attention of the court * * *.

"4. The court will thoroughly inquire into the matter hereby submitted to it and will include in its findings a full statement of the facts it may deem to be established.

"5. The commandant of the navy yard, ——, ——, is hereby directed to furnish * * *.

"———, "

"Secretary of the Navy."

Var. 3.—(To inquire into the grounding (loss) of a vessel.) " * * for the purpose of inquiring into all the circumstances connected with the grounding (loss) of the U. S. S. —— near —— on September —, 19—.

"2. The court will make a thorough investigation into all the circumstances connected with the aforesaid grounding (loss), the causes thereof, damages to property resulting

745. Court meets.—

FIRST DAY (5)

U. S. S. NEW MEXICO,
SAN PEDRO, CALIF.,
Friday, February 23, 19—.

The court met at 10 a. m.

Present:

Lieutenant Commander A—— B. C——, U. S. Navy,
Lieutenant Commander D—— E. F——, U. S. Navy, and
Lieutenant G—— H. I——, U. S. Navy, members; and
Lieutenant J—— K. L——, U. S. Navy, judge advocate (6).

therefrom, injuries to personnel incidental thereto, and the responsibility therefor. In connection with this inquiry, the attention of the court is invited to section 725, Naval Courts and Boards.

"3. It is directed that the court notify Commander ——, U. S. Navy, and Lieutenant ——, U. S. Navy, of the time and place of the meeting of the court and that they will be parties to the inquiry in the status of defendants, and will be accorded the rights of such parties in accordance with the provisions of Naval Courts and Boards.

"4. The attention of the court is particularly invited to section 734, Naval Courts and Boards.

"5. The court will include in its findings a full statement of the facts it may deem to be established. The court will further give its opinion as to whether any offenses have been committed or serious blame incurred, and, in case its opinion be that offenses have been committed or serious blame incurred, will specifically recommend what further proceedings should be had.

"6. The Commander ——, U. S. Asiatic Fleet, is hereby directed to furnish the necessary clerical assistance to aid the judge advocate in recording the proceedings of this court of inquiry.

"7. In addition to the record of proceedings and copies required by Naval Courts and Boards, two copies shall be made for the convening authority.

———
"Admiral, U. S. Navy, Commander in Chief,
"U. S. Asiatic Fleet."

Var. 4.—(Collision with a merchant vessel.)

"1. * * *.

"2. The court will make a thorough inquiry into all the circumstances connected with the aforesaid collision, the responsibility therefor, the injuries to personnel incident thereto, the extent of the damage received by each vessel and the probable money value thereof, and all attendant circumstances. In connection with this inquiry, the attention of the court is invited to section 726, Naval Courts and Boards.

"3. It is directed that the court notify the Commanding Officer of the U. S. S. —— of the time and place of meeting of the court and that he will be a party to the inquiry in the status of a defendant and will be accorded the rights of such party in accordance with the provisions of Naval Courts and Boards; and further directed that the master and crew of the —— be notified of the time and place of meeting and that they will be afforded a hearing.

"4. * * *.

"5. * * *.

"6. * * *.

"7. The record of proceedings will be prepared in quintuplicate.

———
"Secretary of the Navy."

(5) When the inquiry occupies but one day this entry is omitted.

(6) Variation.—"Absent: Lieutenant Commander A—— B. C——, U. S. Navy, member. The judge advocate read a medical certificate, which is prefixed, accounting

The judge advocate introduced F—— E. D——, yeoman first class, U. S. Navy, as reporter.

The court was cleared and the judge advocate read the precept, original prefixed hereto.

All matters preliminary to the inquiry having been determined and the court having decided to sit with open doors, the court was opened.

746. Defendant and counsel enter.—

Lieutenant X—— Y. Z——, U. S. Navy, entered as a defendant, and with the permission of the court introduced Lieutenant U—— V. W——, U. S. Navy, as his counsel (7).

747. Defendant informed of his rights.—

The defendant was informed of his rights.

748. Complainant and counsel enter.—

The complainant, Commander R—— S——, U. S. Navy, entered. With the permission of the court, the complainant introduced Major B—— C. D——, U. S. Marine Corps, as his counsel.

750. Precept read.—

The judge advocate read the precept.

751. Right to challenge accorded.—

The defendant and the complainant stated that they did not object to any member.

for the absence of Lieutenant Commander C—— (was unable to account for his absence) (or, as the case may be)."

"The court addressed a letter to the convening authority, copy prefixed marked "C", and then, at — a. m., took a recess until — p. m. (or, the court then at — a. m. adjourned until — a. m. tomorrow, Saturday, to await the arrival of the absent member)."

(7) Variation 1.—" * * and stated that he did not wish counsel (that he waived his right to be present at the inquiry, and thereupon withdrew)."

Var. 2.—"Commander L—— M——, U. S. Navy, Lieutenant N—— O——, U. S. Navy, and Ensign P—— Q—— U. S. Navy, entered as defendants."

Var. 3.—"The court received from ——, defendant, a communication, which was read and appended, marked '——', stating that he was unable to be present, owing to —— (Give reason; if illness, a medical certificate must be presented, read, and appended. This communication may be made personally by any competent person.)"

"The court then, at — p. m., adjourned until — a. m. tomorrow, Saturday."

Var. 4.—"——, a defendant, entered and asked permission to introduce Lieutenant U—— W——, U. S. Navy, as his counsel. At the request of a member (the judge advocate), the court was cleared. The court was opened. —— entered and was informed that, while he was at liberty to designate some other person, his request to have Lieutenant U—— W——, U. S. Navy, act as his counsel was not approved for the reason that (give reason)."

752. Members, judge advocate, and reporter sworn.—

Each member, the judge advocate, and reporter were duly sworn (8).

753. Witnesses separated.—

No witnesses not otherwise connected with the inquiry were present.

754. Judge advocate called as a witness.—

The judge advocate was called as a witness by the judge advocate, and was duly sworn.

Examined by the judge advocate:

1. Q. State your name, rank, and present station.

A. J—— K. L——, lieutenant, U. S. Navy, judge advocate of this court.

755. Witness introduces documentary evidence.—

2. Q. Are you the legal custodian of the official log of the U. S. S. *New Mexico*? If so, produce it.

A. I am; here it is.

The log was submitted to the defendant and to the court, and by the judge advocate offered in evidence for the purpose only of reading into the record such extracts therefrom as show the location and movements of the U. S. S. *New Mexico* from January 27, 19—, to February 17, 19—, and the officers serving on board during that period.

There being no objection, it was so received.

3. Q. Refer to that log and read such portions thereof as pertain to the facts for which it has been offered in evidence.

The witness read from the said log extracts, copy appended marked "Exhibit 1."

Examined by the complainant:

20. Q. * * *.

A. * * *.

Cross-examined by the defendant:

25. Q. * * *.

A. * * *.

Reexamined by the judge advocate:

40. Q. * * *.

A. * * *.

Examined by the court:

52. Q. * * *.

A. * * *.

None of the parties to the inquiry desired further to examine this witness; the witness resumed his seat as judge advocate.

(8) Art. 58 A. G. N. See app. E.

756. Recess.—

The court then, at 11:45 a. m., took a recess until 1 p. m., at which time it reconvened.

Present: All the members, the judge advocate, the parties to the inquiry, and their counsel.

No witnesses not otherwise connected with the inquiry were present.

757. Examination of a witness called by the judge advocate.—

A witness called by the judge advocate entered, was duly sworn, and was informed of the subject matter of the inquiry.

Examined by the judge advocate:

1. Q. State your name, residence, and occupation.

A. * * *.

(Witness examined as in sec. 755.)

None of the parties to the inquiry desired further to examine this witness.

The court informed the witness that he was privileged to make any further statement covering anything relating to the subject matter of the inquiry which he thought should be a matter of record in connection therewith, which had not been fully brought out by the previous questioning.

The witness made the following statement: * * * (9).

The defendant requested that the witness verify his testimony. The witness verified his testimony, was duly warned, and withdrew.

758. Defendant designated.—

At this stage of the proceedings it appeared to the court that Lieutenant Z—— Y. X——, U. S. Navy, was a defendant. He was accordingly called before the court and advised to that effect and of the testimony that seemed to implicate him. He examined the precept, stated that he did not object to any member of the court, and was informed of his rights.

759. Person not named as a defendant requests privileges.—

Lieutenant (junior grade) M—— N. O——, U. S. Navy, informed the court that he had an interest in the subject matter of the inquiry in that he * * *. He requested that he be allowed to be present during the course of the inquiry, examine witnesses, and introduce new matter pertinent to the inquiry in the same manner as a defendant.

The request of Lieutenant (junior grade) O—— was granted (10).

(9) *Variation*.—"The witness stated that he had nothing further to say."

(10) *Variation*.—"At this stage of the proceedings it appeared to the court that Lieutenant (junior grade) M—— N. O—— had an interest in the subject matter of the inquiry. He was accordingly called before the court and advised to that effect and that he would be allowed to be present during the course of the inquiry, examine witnesses, and introduce new matter pertinent to the inquiry in the same manner as a defendant."

760. View by the court.—The court was cleared. The court was opened (11). All parties to the inquiry entered, and the court announced that it would adjourn to the charthouse and bridge of the U. S. S. *New Mexico* (12).

All the members, the judge advocate, and parties to the inquiry and their counsel assembled on the bridge of the U. S. S. *New Mexico* and made an inspection of the bridge and charthouse. A witness called by the judge advocate entered, was duly sworn, and was informed of the subject matter of the inquiry.

Examined by the judge advocate:

* * * * *

All the members, the judge advocate, the parties to the inquiry, and their counsel returned to the regular place of meeting, where the court was reassembled.

761. Judge advocate rests his case.—

The judge advocate stated that he had no more witnesses.

762. Adjournment.—

The court then, at 4 p. m., adjourned until 10 a. m. tomorrow (13).

763. Second day.—

SECOND DAY

U. S. S. NEW MEXICO,
SAN PEDRO, CALIF.,
Saturday, February 24, 19—.

The court met at 10 a. m.

Present:

Lieutenant Commander A—— B. C——, U. S. Navy,
Lieutenant Commander D—— E. F——, U. S. Navy, and
Lieutenant G—— H. I——, U. S. Navy, members; and
Lieutenant J—— K. L——, U. S. Navy, judge advocate;
F—— E. D——, yeoman first class, U. S. Navy, reporter.
Lieutenant X—— Y. Z——, U. S. Navy, defendant, and his
counsel.

Lieutenant Z—— Y. X——, U. S. Navy, defendant, and

Lieutenant (junior grade) M—— N. O——, U. S. Navy, interested party.

The record of proceedings of the first day of the inquiry was read and approved (14).

(11) Clearing the court may be dispensed with under the general principles of sec. 373.

(12) Variation.—“* * * to the scene of the accident (or, as the case may be).”

(13) Variation.—“* * * until 10 a. m., March 1, 19—.”

(14) Variation.—“The judge advocate stated that the record of proceedings of the first day of the inquiry was not ready. At the request of the judge advocate the court then, at — a. m., took a recess until — p. m., at which time it reconvened (or, the court decided to postpone the reading of this record until such time as it shall be reported ready, and in the meantime to proceed with the inquiry).”

No witnesses not otherwise connected with the inquiry were present.
764. Examination of a witness called by the defendant.—

A witness called by Lieutenant X—— Y. Z——, a defendant, entered, was duly sworn, and was informed of the subject matter of the inquiry.

Examined by the judge advocate:

1. Q. State your name, rank, and present station.

A. * * *.

Examined by Lieutenant Z——, defendant:

2. Q. * * *.

A. * * *.

Examined by Lieutenant X——, defendant:

11. Q. * * *.

A. * * *.

Examined by Lieutenant (junior grade) O——:

14. Q. * * *

A. * * *

Cross-examined by the judge advocate:

16. Q. * * *.

A. * * *.

Cross-examined by the complainant:

20. Q. * * *.

A. * * *.

Reexamined by Lieutenant X——, defendant.

25. Q. * * *.

A. * * *.

Examined by the court:

29. Q. * * *.

A. * * *.

None of the parties to the inquiry desired further to examine this witness.

The court informed the witness that he was privileged to make any further statement covering anything relating to the subject matter of the inquiry which he thought should be a matter of record in connection therewith, which had not been fully brought out by the previous questioning.

The witness stated that he had nothing further to say.

The witness was duly warned and withdrew.

765. Defendant as a witness.—

Lieutenant X——, a defendant, requested that he be sworn as a witness. His request was granted and he was duly sworn, having been informed by the court that his examination would be governed

by the same rules as govern the examination of an accused who takes the stand at his own request in a trial by court-martial (15).

Examined by Lieutenant X——, defendant:

* * * * *

Examined by Lieutenant Z——, defendant:

* * * * *

Examined by Lieutenant (junior grade) O——:

* * * * *

Cross-examined by the judge advocate:

* * * * *

Cross-examined by the complainant:

* * * * *

None of the parties to the inquiry desired further to examine this witness; he resumed his seat as defendant.

766. Defendants rest their cases.—

Neither of the defendants desired any more witnesses (16).

767. Witness for the court.—

The court was cleared. The court was opened and all parties to the inquiry entered. The court announced that it desired further testimony, and directed that B—— B——, quartermaster second class, U. S. Navy, be called as a witness for the court.

A witness called by the court entered, was duly sworn, and was informed of the subject matter of the inquiry.

Examined by the judge advocate:

1. Q. State your name, rate, and present station.

A. * * *

Examined by the court:

* * * * *

768. No more witnesses desired.—

Neither the court, the judge advocate, nor any party to the inquiry desired any more witnesses.

769. Statements.—

Lieutenant Z—— and Lieutenant X——, U. S. Navy, defendants, each submitted a written statement, which statements were read and are appended (17).

(15) See secs. 234, 262, and 734.

(16) *Variation 1.*—"None of the defendants desired any more witnesses."

Var. 2.—(In case no more witnesses are desired by anyone.) "Neither the court, the judge advocate, nor any party to the inquiry desired any more witnesses."

(17) *Variation.*—"Lieutenant Z——, defendant, made an oral statement as follows: * * *."

770. Arguments.—

The judge advocate read his written opening argument, which is appended (18).

Commander S——, complainant, read a written argument, which is appended.

Lieutenant Z——, defendant, read a written argument, which is appended.

Lieutenant X——, defendant, desired to make no argument.

The judge advocate read his written closing argument, which is appended.

771. Inquiry finished.—

The inquiry was finished, all parties thereto withdrawing.

772. Finding of facts.—

The court, having thoroughly inquired into all the facts and circumstances connected with the allegations contained in the precept and having considered the evidence adduced, finds as follows:

FINDING OF FACTS (19)

1. That Lieutenant X—— Y. Z——, U. S. Navy, did, on or about January 31, 19—, on board the U. S. S. *New Mexico*, * * *.

2. * * *.

* * * * *

773. Opinion.—**OPINION**

1. That Lieutenant X—— Y. Z——, U. S. Navy, on or about January 31, 19—, on board the U. S. S. *New Mexico*, knowingly and wilfully violated a lawful regulation of the Secretary of the Navy, in that he * * * (20).

2. * * *.

(18) *Variation 1.*—"The judge advocate made the following opening argument: * * *."

Var. 2.—"The judge advocate desired to make no opening argument."

(19) See sec. 526.

(20) *Variation 1.*—"That the evidence does not establish any misconduct on the part of Lieutenant X—— Y. Z——, U. S. Navy."

Var. 2.—"1. That the tube blew out due to a defect in manufacture.

"2. That the defect was of such a nature that it would have escaped the notice of an expert engineer.

"3. That the accident was not due to the fault, negligence, or inefficiency of any person in the naval service or connected therewith.

"4. That the death of ———, late fireman second class, U. S. Navy, was due to an injury received in the line of duty and was not the result of his own misconduct."

774. Recommendation.—

RECOMMENDATIONS

1. That Lieutenant X—— Y. Z——, U. S. Navy, be brought to trial by general court-martial on the charges: I. Violation of a lawful regulation issued by the Secretary of the Navy; and II. * * *. That specifications of the first charge should cover the offenses set forth in paragraphs 1 and 2 of the court's "Opinion." That the specification of the second charge should * * *.

2. That Lieutenant Z—— Y. X——, U. S. Navy, be brought to trial by general court-martial on the charges * * * (21).

A—— B. C——,

Lieutenant Commander, U. S. Navy, President,

G—— H. I——,

Lieutenant, U. S. Navy, Member.

775. Minority report.—

I disagree with paragraph 3 of the court's findings for the reason that * * *.

I disagree with paragraph 2 of the court's opinion for the reason that * * *.

I disagree with paragraph 4 of the court's recommendation for the reason that * * *.

D—— E. F——,

Lieutenant Commander, U. S. Navy, Member.

776. Final entry.—

The record of proceedings of the second day of the inquiry was read and approved, the court being cleared during the reading of so much thereof as pertains to the proceedings in cleared court, and the court having finished the inquiry, then at ——, adjourned to await the action of the convening authority.

A—— B. C——,

Lieutenant Commander, U. S. Navy,

President.

J—— K. L——,

Lieutenant, U. S. Navy,

Judge Advocate.

777. Documents appended.—

(Here is appended the written statement submitted by Lieutenant Z——, defendant.)

(Other documents are appended in the order of their appearance in the proceedings.)

(21) Variation.—"The court recommends that no further proceedings be had in the matter."

778. Exhibits.—

(Here are appended, in order of their presentation to the court, numbered in sequence, the exhibits received in evidence.)

BOARD OF INVESTIGATION PROCEDURE

779. Indorsement of the reviewing authority.—

U. S. FLEET

DESTROYERS, BATTLE FORCE

U. S. S. DETROIT, Flagship

SAN DIEGO, CALIF.,

September 17, 19—.

The proceedings, findings, opinion, and recommendation of the board of investigation in the attached case, and the action of the convening authority thereon, are approved.

C—— H. W——,

Read Admiral, U. S. Navy,

Commander Destroyers, Battle Force,

U. S. Fleet.

780. Indorsement of the convening authority (1).—

U. S. FLEET, BATTLE FORCE

DESTROYER SQUADRON 2

U. S. S. DECATUR, Flagship

SAN DIEGO, CALIF.,

September 14, 19—.

The proceedings, findings, opinion, and recommendation of the board of investigation in the attached case are approved.

The convening authority invites attention to the testimony of Ensign ——, U. S. Navy, in charge of the fireroom station in the A—— since October, 19—. The testimony of this officer indicates a general lack of efficiency in the operation and upkeep of the engineering plant of the A—— previous to the time that Lieutenant Commander X—— Y. Z—— took charge.

The convening authority is well satisfied with the present operation of the engineering plant of the A——, and feels that every

(1) This record may be transmitted to the judge advocate in case a court of inquiry is convened, who, in such a case, shall forward it with the record of proceedings of the court of inquiry. In any case, the provisions of sec. 527, regarding the "Advance Copy", shall apply.

effort is being made to bring the ship to its former efficiency. He is of the opinion that the unsatisfactory conditions noted by the board are to be attributed to inefficient operation and upkeep by former personnel.

In view of the numerous changes in personnel and the time that has elapsed since the unsatisfactory conditions arose, it is recommended that no further action be taken (2).

M—— N. O——,
Captain, U. S. Navy,
Commander Destroyer Squadron 2,
Battle Force, U. S. Fleet.

781. Copy of findings, opinion, and recommendations (3).—

FINDING OF FACTS

* * * * * *

OPINION

* * * * * *

RECOMMENDATIONS

* * * * * *

(2) *Variation*.—"The proceedings, opinion, and recommendation of the board of investigation in the attached case are approved. No further action is contemplated."

If further action is contemplated, the indorsement should be changed to indicate the nature thereof, as for example, "A court of inquiry will be convened" or "The Commander —— will be requested to convene a court of inquiry."

(3) This is a copy of the findings, opinion, and recommendation; it is not signed and is to be prefixed to the entire record so that it shall be on top when the record is submitted to the convening authority.

782. Cover page.—

RECORD OF PROCEEDINGS

OF A

BOARD OF INVESTIGATION

CONVENED ON BOARD THE (4)

U. S. S. A——

BY ORDER OF

THE COMMANDER, DESTROYER SQUADRON TWO

BATTLE FORCE, U. S. FLEET

To inquire into the conditions existing in the engineering department
of the U. S. S. A——.

September 7, 19— (6)

(4) Variation.—

"CONVENED AT THE

NAVY YARD, NEW YORK, NEW YORK

BY ORDER OF

THE SECRETARY OF THE NAVY"

"IN THE CASE OF

J—— J. G——, late apprentice seaman, U. S. Navy"

(6) This is the date of first convening for the investigation.

783. Index for lengthy case.—An index is required whenever a record exceeds 20 pages in length.

784. Precept (7).—

UNITED STATES FLEET
BATTLE FORCE
DESTROYER SQUADRON TWO
U. S. S. A——, Flagship

NAVY YARD, NEW YORK, N. Y.,
August 24, 19—.

From: Commander, Destroyer Squadron Two.

To: Captain A—— B. C——, U. S. Navy, U. S. S. B——.

Subject: Board of investigation to inquire into and report upon the conditions existing in the engineering department of the U. S. S. A——.

1. A board of investigation, consisting of yourself as senior member and of Commanders D—— E. F—— and G—— H. I——, U. S. Navy, as additional members, and of Lieutenant J—— K. L——, U. S. Navy, as recorder, will convene on board the U. S. S. A—— at the earliest opportunity (8) for the purpose of inquiring into and reporting upon the conditions existing in the engineering department of the U. S. S. A——, and the method of operating same.

2. It is directed that the board notify Lieutenant Commander X—— Y. Z——, U. S. Navy, senior engineer officer of the U. S. S. A——, of the time and place of meeting and that he will be a party to the investigation in the status of defendant and will be accorded the rights of such party in accordance with the provisions of Naval Courts and Boards.

3. The board will make a thorough investigation into the matter hereby submitted to it, and upon the conclusion of its investigation will report the facts established thereby. If the facts establish existing defects of a serious nature, the board will also give its opinion as to the responsibility therefor, and the repairs necessary to remedy same; and, in this latter contingency, will forward, in addition to the original record of proceedings, a partial copy covering material in accordance with the provisions of Naval Courts and Boards.

4. The attention of the board is particularly invited to section 734, Naval Courts and Boards.

(7) The original precept is prefixed to the record.

(8) Variation.—“at 10 a. m., Thursday, August 25, 19—, or as soon thereafter as practicable.”

5. The commanding officer of the U. S. S. B—— is hereby directed to furnish the necessary clerical assistance.

M—— N. O——,
Captain, U. S. Navy,
Commander, Destroyer Squadron Two,
Battle Force, U. S. Fleet (9).

785. Board meets.—

FIRST DAY (10)

U. S. S. A——,
 SAN DIEGO, CALIF.,
Wednesday, September 7, 19—.

The board met at 10 a. m. (11).

Present:

Captain A—— B. C——, U. S. Navy, senior member;
 Commander D—— E. F——, U. S. Navy, member;
 Commander G—— H. I——, U. S. Navy, member; and
 Lieutenant J—— K. L——, U. S. Navy, recorder.

The recorder introduced F—— E. D——, yeoman first class, U. S. Navy, as reporter.

The convening order, hereto prefixed, was read, and the board determined upon its procedure and decided to sit with open doors.

786. Defendant enters.—

Lieutenant Commander X—— Y. Z——, U. S. Navy, senior engineer officer of the U. S. S. A——, entered as defendant, and stated that he did not desire counsel.

(9) Variation 1 (see sec. 723).—

"1. A board of investigation, consisting of yourself as senior member, and of Lieutenant G—— H——, Medical Corps, U. S. Navy, and Lieutenant I—— K——, U. S. Navy, as additional members, will immediately assemble for the purpose of investigating and reporting upon the circumstances attending the death of J—— J. G——, late apprentice seaman, U. S. Navy, attached to the U. S. S. B——, that occurred at or about 9:40 a. m., this date, at the —— Hospital, New York City.

"2. The board is hereby empowered and directed to administer an oath to each witness attending to testify or depose during the course of the proceedings of the board of investigation. (This paragraph may be omitted when there is little probability of legal sequels. See sections 722 and 723.)

"3. The proceedings of the board will be conducted in accordance with the provisions of ch. X, Naval Courts and Boards, and the board will give the opinion called for by sec. 723.

"4. The attention of the board is particularly invited to section 734, Naval Courts and Boards.

"5. The commanding officer of the U. S. S. B—— is hereby directed to furnish the necessary clerical assistance.

"—— ———."

Var. 2.—

"Subject: Board of investigation in the case of collision between the motor boats of the U. S. S. —— and the U. S. S. —— that occurred in the North River July 29, 19—.

"1. * * * collision between the first motor boat of the U. S. S. —— and the second motor boat of the U. S. S. —— that occurred in the North River, New York, July 29, 19—.

"2. The board will make a thorough investigation of all the circumstances attendant to the above-mentioned collision and upon the conclusion of its investigation will report the facts established thereby, the amount of damage to each motor boat, and the board's

787. Precept read.—

The recorder read the convening order.

788. Defendant informed of his rights.—

The defendant was informed of his rights.

opinion as to the responsibility for the collision, and will forward, in addition to the original record of proceedings, a partial copy covering material in accordance with the provisions of Naval Courts and Boards.

"3. The attention of the board is particularly invited to section 734, Naval Courts and Boards.

"—————"

(10) When the investigation occupies but one day this entry is omitted.

(11) *Variation* (Procedure when board performs functions of an inquest).—

"At a board of investigation assembled by the order hereto prefixed, on the body of J—— J. G——, apprentice seaman, U. S. Navy, found dead.

"Present:

"* * *

"Precept read.—

"The recorder read the precept.

"Board inspects body.—

"The board proceeded to the ——— Hospital, New York City, for the purpose of viewing the body. (* * * to the place where the body was found.)

"Medical member gives his opinion as to necessity for an autopsy.—

"Lieutenant Commander G—— H. I——, Medical Corps, U. S. Navy, examined the body, identified it as that of J—— J. G——, apprentice seaman, U. S. Navy, and reported to the board that the cause of death was too apparent to necessitate the performance of an autopsy. (* * * reported to the board that the cause of death was not apparent and required an autopsy to be performed, which was done.)

"Witnesses called.—

"A witness was called and declared as follows:

"Examined by the recorder.

"1. Q. State your name, residence, and occupation.

"A. S—— B——, ——— Hospital, New York City, physician.

"2. Q. State all you know about the death of J—— J. G——, apprentice seaman, U. S. Navy.

"A. * * *

"The witness withdrew.

"The board then proceeded to the First Precinct Police Station, New York City.

"A witness was called and declared as follows:

"* * *

"The board returned to the regular place of meeting and reassembled. Present: All the members, (defendant) (counsel), recorder, and reporter.

"A witness was called and declared as follows:

"Examined by the recorder:

"1. Q. State your name, rank, and present station.

"A. B—— C. D——, lieutenant commander, U. S. Navy, executive officer, U. S. S.

"2. Q. What was the status of J—— J. G——, late apprentice seaman, U. S. Navy, on ———, 19—?

"A. * * *

"The witness withdrew.

"Medical member gives his opinion.—

"Lieutenant Commander G—— H. I——, Medical Corps, U. S. Navy, member of the board, who had performed an autopsy on the body, stated that, in his opinion, the deceased met his death on (date) as a result of the following injuries: * * *

"Investigation finished.—

"The investigation was finished.

"Finding of facts. (See Sec. 723.)

"Opinion of the board.—

"OPINION

"The board, from a view of the body and from the evidence before it, identified the body as that of J—— J. G——, late apprentice seaman, U. S. Navy, and is of the

789. Witnesses separated.—

No witnesses not otherwise connected with the investigation were present.

790. Examination of a witness called by the recorder.—

A witness called by the recorder entered, was informed of the subject matter of the investigation, and declared as follows:

Examined by the recorder:

1. Q. State your name, rank, and present station.

A. * * *

Cross-examined by the defendant:

13. Q. * * *

A. * * *

Re-examined by the recorder:

17. Q. * * *

A. * * *

The defendant did not desire to re-cross examine the witness.

* * * * *

Examined by the board:

21. Q. * * *

A. * * *

* * * * *

None of the parties to the investigation desired further to examine this witness.

The board informed the witness that he was privileged to make any further statement covering anything relating to the subject matter of the investigation which he thought should be a matter of record in connection therewith, which had not been fully brought out by the previous questioning.

The witness stated that he had nothing further to say (12).

The witness was duly warned and withdrew (13).

791. Defendant designated.—

At this stage of the proceedings it appeared to the board that Lieutenant Z—— Y. X——, U. S. Navy, was a defendant. He was

opinion that J—— J. G——, late apprentice seaman, U. S. Navy, died on ——, 19——, at the —— Hospital, New York City, New York, while on authorized leave, by reason of being struck by a taxicab driven by ——, of New York City, and that his death occurred in the line of duty and was not the result of his own misconduct. (* * * by reason of self-inflicted gunshot wound in right temple * * * not in the line of duty and was the result * * *).

“———”
“———”
“———”

(12) Variation.—“The witness made the following statement: * * *.”

(13) Variation.—“The witness verified his declaration (testimony—in case the witness was sworn), was duly warned, and withdrew.”

accordingly called before the board and advised to that effect, and of the declarations that seemed to implicate him. He examined the precept, stated that he did not object to any member of the board, and was informed of his rights (14).

792. Person not named as a defendant requests privileges.—

Chief Machinist C—— C. C——, U. S. Navy, informed the board that he had an interest in the subject-matter of the investigation in that he * * *. He requested that he be allowed to be present during the course of the investigation, examine witnesses, and introduce new matter pertinent to the investigation in the same manner as a defendant.

The request of Chief Machinist C—— C. C—— was granted (15).

793. View by the board.—

The board announced that it would adjourn to the engineering department of the U. S. S. A——.

All the members, the recorder, and the parties to the investigation assembled in the starboard engine room of the U. S. S. A—— and proceeded to make an inspection of the engineering department (16).

794. Recess.—

The board then, at 11:30 a. m., took a recess until 1 p. m., at which time it reconvened in no. 2 fireroom of the U. S. S. A——.

Present: All the members, the recorder, and the parties to the investigation.

The board continued its inspection of the engineering department.

795. Adjournment.—

The board then, at 4:30 p. m., adjourned until 10 a. m. tomorrow (17).

(14) Great care should be taken by the board that this procedure is observed whenever appropriate. Should the defendant desire counsel, the entry continues: "Lieutenant X——, with the permission of the board, introduced Captain C—— D. E——, U. S. Marine Corps, as his counsel."

Conversely, should it become apparent at any time that a person who has been designated a defendant is involved in an insignificant degree, the court should inform him that it appeared he was no longer a defendant.

Variation.—" * * * a defendant, was no longer such, and he was accordingly informed of his change in status, and withdrew."

A board of investigation has no authority to designate as a defendant any person outside the naval service or employ.

(In this connection see sec. 734.)

(15) *Variation.*—"At this stage of the proceedings it appeared to the board that Chief Machinist C—— C. C——, U. S. Navy, was an interested party. He was accordingly called before the board and advised to that effect and that he would be allowed to be present during the course of the investigation, examine witnesses, and introduce new matter pertinent to the investigation in the same manner as a defendant."

A person granted the privileges of an interested party may be called as a witness.

(16) Witnesses may be examined in the regular manner during this inspection, and the board may, in its discretion, allow the introduction of evidence out of its regular order.

(17) *Variation.*—" * * * until 10 a. m., September 10, 19— "

796. Second day.—

SECOND DAY

U. S. S. A——,
 SAN DIEGO, CALIF.,
Thursday, September 8, 19—.

The board met at 10 a. m.

Present:

Captain A—— B. C——, U. S. Navy, senior member;

Commander D—— E. F——, U. S. Navy, member;

Commander G—— H. I——, U. S. Navy, member; and

Lieutenant J—— K. L——, U. S. Navy, recorder.

F—— E. D——, yeoman first class, U. S. Navy, reporter.

Lieutenant Commander X—— Y. Z—— and Lieutenant
 Z—— Y. X——, U. S. Navy, defendants (18).

Chief Machinist C—— C. C——, U. S. Navy, interested party.

The record of proceedings of the first day of the investigation was read and approved.

797. View by the board (completed).—

The board then adjourned to the engineering department of the U. S. S. A—— and continued its inspection.

On the completion of its inspection all the members, the recorder, and the parties to the investigation returned to the regular place of meeting, where the board was reassembled.

No witnesses not otherwise connected with the investigation were present.

798. Recorder rests his case.—

The recorder stated that he had no more witnesses.

799. Examination of a witness called by a defendant.—

A witness called by Lieutenant Commander X—— Y. Z——, a defendant, entered, was informed of the subject-matter of the investigation, and declared as follows:

Examined by the recorder:

1. Q. State your name, rate, and present station.

A. * * *

* * * * *

Examined by Lieutenant Commander Z——, defendant:

2. Q. * * *

A. * * *

* * * * *

(18) And their counsel, if there be such.

Examined by Lieutenant X——, defendant: (19).

17. Q. * * *

A. * * *

* * * * *

Examined by Chief Machinist C——:

22. Q. * * *

A. * * *

* * * * *

Cross-examined by the recorder:

25. Q. * * *

A. * * * (20).

* * * * *

Reexamined by Lieutenant X——, defendant:

28. Q. * * *

A. * * *

* * * * *

The recorder did not desire to recross-examine this witness.

The board did not desire to examine this witness.

None of the parties to the investigation desired further to examine this witness.

The board informed the witness that he was privileged to make any further statement covering anything relating to the subject matter of the investigation which he thought should be a matter of record in connection therewith, which had not been fully brought out by the previous questioning.

The witness made the following statement: * * *.

The witness was duly warned and withdrew.

800. Defendant as a witness in his own behalf.—

Lieutenant Commander X—— Y. Z——, defendant, called himself as a witness in his own behalf and declared as follows:

Examined by Lieutenant Commander Z——, defendant:

1. Q. * * *.

A. * * *.

* * * * *

Examined by Lieutenant X——, defendant:

11. Q. * * *.

A. * * *.

(Examination continued as for preceding witness.)

None of the parties to the investigation desired further to examine this witness; he resumed his seat as defendant (21).

(19) Each defendant may examine a witness called by another.

(20) If there be a complainant, he may also cross-examine.

(21) The recorder, a member, or a party to the investigation is not warned after declaring or testifying

801. Defendant redesignated an interested party.—

At this stage of the proceedings it appeared to the board that Lieutenant X—— was involved to an insignificant degree. He was, therefore, advised to that effect and that he no longer was a defendant, but would retain the privileges of an interested party.

802. Defendants rest their cases.—

Neither of the defendants desired to call any more witnesses (22).

803. Witness for the board.—

The board was cleared. The board was opened and all parties to the investigation entered. The board announced that it desired further declarations and directed that Machinist D—— D——, U. S. Navy, be called as a witness for the board.

A witness called by the board entered, was informed of the subject matter of the investigation, and declared as follows:

Examined by the recorder:

1. Q. State your name, rank, and present station.

A. * * *

* * * * *

Examined by the board:

2. Q. * * *

A. * * *

* * * * *

804. No more witnesses desired.—

Neither the board, the recorder, nor any party to the investigation desired to call any more witnesses.

805. Statements.—

Lieutenant Commander Z—— and Lieutenant X——, defendants, each submitted a written statement, which statements were read and are appended (23).

806. Arguments.—

The recorder read his written opening argument, which is appended (24).

Lieutenant Commander Z——, defendant, read a written argument, which is appended.

Lieutenant X——, defendant, desired to make no argument.

The recorder read his written closing argument, which is appended.

(22) *Variation.*—(In case no more witnesses are desired by anyone) "Neither the board, the recorder, nor any party to the investigation desired to call any more witnesses."

(23) *Variation.*—"Lieutenant Commander Z——, a defendant, made an oral statement as follows: * * *."

(24) *Variation 1.*—"The recorder made the following opening argument."

Var. 2.—"The recorder desired to make no opening argument."

807. Investigation finished.—

The investigation was finished, all parties thereto withdrawing (25).

808. Finding of facts (26).—

After full and mature deliberation the board finds as follows:

FINDING OF FACTS

1. *Main engines.*—The main turbines are in good and normal condition, no defects being apparent or known.

2. *Boilers.*—Several 2-inch tubes in boiler no. 6 were found slightly pitted. A number of lower 4-inch tubes in all boilers were found pitted but not seriously. A majority of the nipples from front headers to cross boxes are pitted but not seriously. Side casings of nearly all boilers are leaky. Several side boxes are bulged. The water side of boiler no. 6 was greasy and dirty. Others inspected were in good condition. Handhole plates are in good condition. On the whole the boilers are in good shape, and are now being thoroughly cleaned and overhauled.

3. *Main air pumps.*—These are of the Weir type with dry and wet ends. In the dry end of the starboard pump the bronze packing ring was frozen in its groove and fused to the plunger. This was repaired. The location of the wet ends of the pumps makes it impracticable to overhaul them during operative period. An examination of the log discloses poor vacuum when ship is underway.

4. *Other auxiliaries.*—So far as the board was able to observe, these are in good condition.

5. *Method of operation.*—At the present time this appears to be in accordance with Navy regulations and practice. So far as can be ascertained from recent data the fuel consumption, both at sea and in port, has been steadily reduced and is approaching former standards.

809. Opinion.—**OPINION**

1. That the only existing defects of a serious nature are in the main air pumps.

2. That no responsibility exists therefor, the defects being caused by long use of the pumps and the fact that they are so located that it is impracticable for the ship's force to overhaul them while the ship is operating.

(25) See sec. 735.

(26) The finding, opinion, and recommendation should be typewritten. A copy thereof is to be prefixed to the entire record.

3. That the main air pumps should be thoroughly overhauled at the first opportunity, and that augmenters should be installed to increase the vacuum obtainable.

A—— B. C——,
Captain, U. S. Navy, Senior Member.

D—— E. F——,
Commander, U. S. Navy, Member.

G—— H. I——,
Commander, U. S. Navy, Member (27).

810. Final entry.—

The record of proceedings of the second day of the investigation was read and approved, the board being cleared during the reading of so much thereof as pertains to the proceedings in cleared court, and the board having finished the investigation, then, at ——, adjourned to await the action of the convening authority.

A—— B. C——,
Captain, U. S. Navy, senior member.

J—— K. L——,
Lieutenant, U. S. Navy, recorder.

811. Documents appended and exhibits.—

(Here is appended the written statement submitted by Lieutenant Commander Z——, defendant, in sec. 805).

(Here is appended the written statement submitted by Lieutenant X——, defendant, in sec. 805).

(Here is appended the recorder's written opening argument, read in sec. 806).

(Here is appended the written argument read by Lieutenant Commander Z——, defendant, in sec. 806).

(Here is appended the recorder's written closing argument read in sec. 806).

(Following the documents appended, exhibits are appended in the order in which they were received in evidence.) (Exhibit 1.) (28).

(27) **Minority report.**—If there be a minority report, the nonconcurring member does not sign here, but makes his report immediately following the report of the board and subscribes his name thereto. The form of such report is as shown in sec. 775.

(28) When the exhibit is an instrument of real evidence, the procedure set forth in secs. 602 and 632 should be carried out. Should the exhibits be objects that do not permit of being secured to the record by through fasteners at the top margin, they should be otherwise attached to the record so as to prevent the possibility of loss, or, if necessary, forwarded under separate cover.

INVESTIGATION PROCEDURE

812. Indorsement of the reviewing authority.—

DEPARTMENT OF THE NAVY,
Washington, April 25, 19—.

The proceedings, findings, and opinion of the investigation in the attached case, and the action of the convening authority thereon, are approved.

M—— N. O——,
Secretary of the Navy.

813. Indorsement of the convening authority (1).—

FIFTH NAVAL DISTRICT,
NAVAL OPERATING BASE,
OFFICE OF THE COMMANDANT,

HAMPTON ROADS, VA.,
April 23, 19—.

The proceedings, findings, and opinion of the investigation in the attached case are approved.

It is recommended that the owners of the barge ——, the —— Company of ——, ——, be allowed the sum of one hundred dollars (\$100.00).

X—— Y. Z——, chief boatswain's mate, U. S. Navy, will be tried by summary court martial for culpable inefficiency in the performance of duty.

P—— Q. R——,
Rear Admiral, U. S. Navy,
Commandant Fifth Naval District.

814. Copy of findings and opinion (2).—

FINDING OF FACTS

* * * * *

OPINION

* * * * *

(1) See sec. 736.

(2) This is a copy of the findings and opinion hereinafter made. This copy is not signed and is to be prefixed to the entire record so that it shall be on top when the record is submitted to the convening authority.

815. Cover page.—

RECORD OF PROCEEDINGS

OF AN

INVESTIGATION

CONDUCTED AT

THE NAVAL OPERATING BASE (3)

HAMPTON ROADS, VA.

BY ORDER OF

THE COMMANDANT OF THE FIFTH NAVAL DISTRICT

To inquire into alleged damages done to the barge ———, owned by
———— Company of ———, ———

April 11, 19— (4)

(3) *Variation.*—

“CONDUCTED AT

“THE NAVY YARD, NEW YORK, N. Y.,

“BY ORDER OF

“THE SECRETARY OF THE NAVY.”

(4) This is the date of the first meeting of the investigation.

816. Index for lengthy case.—An index is required whenever a record exceeds 20 pages in length.

817. Precept.—

File ———.

FIFTH NAVAL DISTRICT

NAVAL OPERATING BASE

OFFICE OF THE COMMANDANT

HAMPTON ROADS, VA.,

March 23, 19—.

From: Commandant, Fifth Naval District.

To: Lieutenant A—— B. C——, U. S. Navy.

Subject: Investigation into damages alleged to have been done to barge ——, owned by the —— Company of ——, ——, by U. S. Navy tug ——, on or about March 2, 19—.

Reference: (a) Letter from the —— Company of ——, ——, of March 4, 19—.

Inclosure: 1. (Reference (a).)

1. Under authority of 5 U. S. Code 93 (5) you are hereby detailed to investigate the circumstances connected with the damage alleged to have been done to the barge —— by the U. S. Navy tug —— while towing a barge, on or about March 2, 19—.

2. In accordance with the provisions of the statute above mentioned, you are given authority to administer an oath to any witness attending to testify or depose during the course of the investigation. (6)

3. You will notify X—— Y. Z——, chief boatswain's mate, U. S. Navy, who was commanding officer of the U. S. Navy tug —— on March 2, 19—, of the time and place of meeting, and that he will be a party to the investigation in the status of defendant and will be accorded the rights of such party in accordance with the provisions of Naval Courts and Boards.

4. You will also notify Mr. S—— W. G——, of ——, ——, who was in charge of the barge —— on March 2, 19—, of the time and place of meeting of the investigation, and that he will be

(5) "Any officer or clerk of any of the departments lawfully detailed to investigate frauds on, or attempts to defraud, the Government, or any irregularity or misconduct of any officer or agent of the United States, and any officer of the Army, Navy, Marine Corps, or Coast Guard, detailed to conduct an investigation, and the recorder, and if there be none the presiding officer, of any military, naval, or Coast Guard board appointed for such purpose, shall have authority to administer an oath to any witness attending to testify or depose in the course of such investigation."

(6) Omit the paragraph if not deemed necessary to give this power. Unless the power is expressly given by the convening authority, the investigating officer should administer no oaths. When such power is given by the convening authority, all testimony shall be taken under oath.

accorded a hearing (7).

5. You will make a thorough investigation into all the circumstances connected with the above occurrence, and upon the completion of the investigation you will make a complete report to the Commandant of the Fifth Naval District of the facts which you deem to be established, together with an opinion as to the repairs necessary, if any, the cost of making same, and the time that will be required (8).

6. Your attention is particularly invited to section 734, Naval Courts and Boards.

7. Clerical assistance will be furnished you upon application to this office. In addition to the record of proceedings and copies required by Naval Courts and Boards, you are directed to make three copies for the convening authority (9).

P—— Q. R——,
Rear Admiral, U. S. Navy,
Commandant, Fifth Naval District.
Senior Officer Present (10)

(The inclosure of the precept is prefixed immediately following the precept.)

(7) Omit pars. 3 and 4 when not applicable.

(8) An opinion on merits of the case should not ordinarily be called for.

(9) Variation 1.—

"DEPARTMENT OF THE NAVY,
Washington, August 17, 19—.

"From: The Secretary of the Navy.

"To: Mr. A—— B——, Navy Department, Washington.

"Subject: Investigation of charges preferred against A—— W. L——, quartermaster in charge of mechanics, navy yard, New York.

"Reference: (a) Letter from W—— M——, foreman of construction and repair, navy yard, New York, of July 11, 19—.

"Inclosures: 2.

"1. Under the authority of 5 U. S. Code 93, you are hereby detailed to investigate certain charges preferred against A—— W. L——, quartermaster in charge of mechanics, department of construction and repair, navy yard, New York, which charges are contained in reference (a), and inclosures.

"2. In accordance with the provisions of the statute above mentioned, you are given authority to administer an oath to any witness attending to testify or depose during the course of the investigation.

"3. You will notify Quartermaster L—— of the nature of the charges against him, notify him that he may be present and will be accorded the rights of a defendant in accordance with the provisions of Naval Courts and Boards.

"4. You will also notify Foreman M—— of these instructions and inform him that he may be present in the status of complainant and will be accorded the right of such party in accordance with the provisions of Naval Courts and Boards.

"5. You will make a careful and thorough examination into all the matters set forth in the papers above mentioned, and upon completion of the investigation you will report to the department the testimony taken and the facts established thereby.

"6. * * *."

818. Investigation meets.—

FIRST DAY (11)

NAVAL OPERATING BASE,
HAMPTON ROADS, VA.,
Monday, April 11, 19—.

The investigating officer, Lieutenant A—— B. C——, U. S. Navy (12), administered the prescribed oath to C—— E. M——, yeoman second class, U. S. Navy, the reporter, who took seat as such.

819. Defendant enters (13).—X—— Y. Z——, chief boatswain's mate, U. S. Navy, entered as defendant and stated that he did not desire counsel (14).

The investigating officer warned Z—— that the evidence before the investigation might be used against him, advised him of his right to counsel, and informed him that counsel will be designated should he so desire.

Z—— persisted in his refusal of counsel (15).

"7. The commandant of the navy yard, New York, is hereby directed to afford you such facilities as may be necessary to the proper conduct of the investigation, and to furnish the necessary clerical assistance.

"———, "
"Secretary of the Navy."

Var. 2.—" * * *

"To: Commander G—— B. W——, U. S. Navy, navy yard, New York, via commandant.

"Subject: Investigation of alleged misconduct of Lieutenant X—— Y. Z——, U. S. Navy.

"Inclosures: 2.

"1. Under the authority of 5 U. S. Code 93, you are hereby detailed to investigate the alleged misconduct of Lieutenant X—— Y. Z——, U. S. Navy, as set forth in the papers inclosed.

"2. * * *

"3. You will notify Lieutenant Z—— of the nature of the charges against him and of his right to be present during the investigation in the status of defendant and that he will be accorded the rights of such party in accordance with the provisions of Naval Courts and Boards.

"4. You will make a thorough investigation of the matters set forth in the papers above mentioned, and upon the completion of the investigation you will make a complete report to the department of the facts which you deem to be established, together with specific data as to the times and places of the misconduct, if any.

"5. Your attention is particularly invited to section 734, Naval Courts and Boards.

"6. The commandant of the navy yard, New York, is hereby directed to afford you such facilities as may be necessary to the proper conduct of the investigation and to furnish the necessary clerical assistance.

"———."

(10) The original precept is to be prefixed to the record.

(11) Where the investigation occupies but one day, this entry is omitted.

(12) Variation.—" * * * Mr. A—— B——, * * *."

(13) If there be no defendant, the entries of this section are omitted.

(14) Variation.—" * * * and with the permission of the investigating officer introduced Mr. U—— V. W—— as his counsel."

(15) This entry is omitted when defendant has counsel.

821. Precept read (18).—

The investigating officer read the order directing him to make the investigation and the letter of the ——— Company, of ———, ———, accompanying it, which are hereto prefixed (19).

822. Parties informed of their rights.—

The defendant was informed of his rights (20).

823. Open or closed doors.—

The investigating officer announced that the investigation would be conducted with open doors (20a).

824. Witnesses separated.—

No witnesses not otherwise connected with the investigation were present.

825. Witness called.—

(An investigation is conducted in the same manner as is a court of inquiry where the investigating officer has been authorized to administer oaths; if he has not been so authorized, it is conducted in the same manner as a board of investigation.)

826. Investigation finished.—

The investigation was finished, all parties thereto withdrawing.

827. Finding of facts.—

After full and mature deliberation, the investigating officer finds as follows:

FINDING OF FACTS

1. That U. S. Navy barge *No. 313*, while being towed by the U. S. Navy tug ———, collided with the barge ———, owned by the ——— Company of ———, ———, then moored to the ——— dock ———, ———, at about 8 p. m., March 2, 19—.

2. That the barge ——— at the time of the collision had no bow or stern lights showing, and that no lights at all were showing except one in the cabin and one at a hatch.

3. That X——— Y. Z———, chief boatswain's mate, U. S. Navy, was in command of the tug ——— at the time of the collision.

4. That barge *No. 313* hit the barge ——— on the stem post slightly damaging the latter as follows: Top section of stem split at scarf

(18) Should there be no parties to the investigation (or none present), this may be omitted.

(19) *Variation.*—"The investigating officer read the order directing him to make the investigation, which is hereto prefixed.

(20) If there are no parties to the investigation this entry is omitted. In such case the next entry after that of sec. 818 is that of sec. 823.

(20a) See sec. 726.

for about two feet, and iron banding over same bent in about three or four inches for a length of about two feet.

5. That the tug ——— and barge *No. 313* sustained no damage as the result of the collision.

6. That the barge ——— was built about 19— or 19—, and is not self-propelled.

828. Opinion.—

OPINION

That to repair the damage done to the barge ——— will necessitate the following: Removal and renewal of upper stem piece (12 feet by 6 inches by 10 inches); removal of banding for straightening and replacement; calking in vicinity of new stem piece; and painting new work. Estimated time to make repairs is three days.

829. Final entry.—

A—— B. C——,
Lieutenant, U. S. Navy,
Investigating Officer (21).

830. Documents appended and exhibits.—(See secs. 777 and 778, which apply to an investigation.)

(21) *Variation.*—

“A—— B——,
“Investigating Officer of the Navy Department.””

CHAPTER XI

BOARDS OF MEDICAL EXAMINERS, EXAMINING BOARDS, AND RETIRING BOARDS

GENERAL

840. **Convening authority.**—The Secretary of the Navy is empowered to convene boards of medical examiners, examining boards, and retiring boards.

The act of March 4, 1917 (34 U. S. Code 233) provides: "That hereafter the Secretary of the Navy may authorize the senior officer present, or other commanding officer, on a foreign station to order boards of medical examiners, examining boards, and retiring boards for the examination of such candidates for appointment, promotion, and retirement in the Navy and Marine Corps as may be serving in such officer's command and may be directed to appear before such board."

The Secretary of the Navy may authorize certain officers to convene supervisory examining boards and boards of medical examiners, except that boards of medical examiners for the examination of candidates for appointment in the Dental Corps must be appointed by the Secretary of the Navy.

In cases where a board is convened by an officer authorized to do so in accordance with the foregoing, the precept must show that the authority to convene such board has been duly granted.

841. **Precept.**—The precept shall set the time and place of meeting and name the membership of the board. The necessary instructions relative to the conduct of examinations need not be contained in the precept, but may accompany the same, or be otherwise issued.

Precept in blank.—In cases where desirable a precept may be signed in blank by a duly authorized convening authority. In such cases the forms given in the following chapters are to be followed, except that the time and place of meeting and the composition of the board is left blank. Such precept in blank will be forwarded to a designated officer together with instructions requiring him to insert the time and place of meeting and to name the composition of the board from such eligible officers as he may deem proper. The desig-

nated officer, having complied with the above, countersigns the precept and forwards it to the officer named by him as president.

The precept convening a board of medical examiners may name additional members and provide that: "Any two members are empowered to act in any one case."

The precept convening an examining board may provide that: "Any three members, provided that they are senior to the officer under examination, are empowered to act in any one case."

The precept may further provide that the junior member present may act as recorder in the absence of the regular recorder.

The original precept may be prefixed to the record of proceedings where the convening authority has ordered the board to examine but one candidate. With this exception, the provisions of the last paragraph of section 386 apply.

COMPOSITION OF BOARDS

842. Board of medical examiners.—In interpreting the statutes it is held that "a board of naval surgeons" means that a board of two medical officers or more of the Navy is empowered to act. The junior member may act as recorder. Dental officers are "a part of the Medical Department of the Navy" (34 U. S. C. 51) and may be ordered as members of medical examining boards. As a matter of policy not more than one dental officer should be a member of any such board. A dental officer may act as recorder.

843. Examining boards—statutory—for promotion or appointment.—Boards for the mental, moral, and professional examination of candidates for promotion or appointment shall consist of not less than three officers, who, in the cases of examinations for promotion, shall be senior in rank to the candidate and, when practicable, shall be selected from the same corps as that to which the candidate belongs.

In the administration of the statute, it is the policy of the department that all members of such boards be of ranks senior to the rank of the candidate and not merely "senior in precedence" in the same rank (C. M. O. 7, 1936, 12).

844. Examining boards for candidates for appointment as acting pay clerk, pay clerk, chief pay clerk, assistant paymaster, and assistant surgeon.—No person shall be appointed an acting pay clerk, pay clerk, or chief pay clerk until his physical, mental, moral, and professional qualifications have been satisfactorily established by examination before a board of examining officers appointed by the Secretary of the Navy, from officers of the Supply Corps when practicable and according to such regulations as he may prescribe.

No candidate shall be appointed as assistant paymaster until his physical, mental, and moral qualifications have been examined and approved by a board of paymasters appointed by the Secretary of the Navy, and according to such regulations as he may prescribe.

Although by statute the determination of the physical, as well as the mental, moral, and professional qualifications of the candidate is left to the naval examining board, the physical examination of such candidate will be conducted by a board of medical examiners who shall report the result thereof to the naval examining board, certifying as to the physical qualifications of the candidate, and such report shall form part of the record of the latter board. This section does not apply to the Marine Corps.

No person shall be appointed assistant surgeon until he has been examined and approved by a board of naval surgeons, designated by the Secretary of the Navy, or by his authority as provided by 34 U. S. Code 233.

845. Examining boards—supervisory.—At the discretion of the Convening Authority, a supervisory board may consist of any number of officers not less than three. Officers junior to the officer to be examined may be designated as members of a supervisory board when the exigencies of the service so require. A separate recorder may or may not be detailed.

846. Retiring board.—The precept may name from five to nine members of a retiring board, provided that not less than two-fifths of such members are officers of the Medical Corps, and may provide that "Any three nonmedical members, provided they are senior to the officer whose disability is to be inquired of, together with any two medical members, are empowered to act in any one case. In the absence of objection by the officer whose disability is to be inquired of, the seniority of the nonmedical members may be waived." The junior member may be authorized to act as recorder in the absence of the regular recorder in such case.

A civilian may be appointed as recorder of a retiring board.

847. Reporter.—An examining or retiring board may avail itself of the services of a reporter, but such person shall in all cases be sworn.

INSTRUCTIONS

848. Candidate presents his orders or letter.—The candidate for promotion or the officer appearing before a retiring board shall present his orders as his authority for appearing before the board. The orders to a candidate shall state the grade or rank, or, if to more than one, the grades or ranks, for promotion to which the candidate is to be examined. Similarly a candidate for appointment shall present

the letter directing him to report for examination. In all cases a certified copy of such orders or letter shall be prefixed to the record of proceedings.

849. Candidate for appointment presents certificate of birth and citizenship.—All candidates for appointment from civil life will submit a certificate to the Bureau of Navigation (or Marine Corps in the case of prospective appointees to that corps) containing a statement of time and place of birth and legal residence and proof of United States citizenship, whether by birth or naturalization. These matters will be determined by the bureau (corps) before issuing orders for the candidate to report before the medical examining board.

850. Candidates failing to present themselves for examination.—Any candidate for appointment who fails to present himself for examination after having obtained permission shall be considered as having forfeited his right to appear.

851. Penalty for false certificate.—Any candidate who gives a false certificate of age, time of service, of character, or makes a false statement to a board of examiners, shall be considered as disqualified.

852. Procedure.—Boards of medical examiners, statutory examining boards, and retiring boards shall be duly organized and sworn in each case, subject to challenge, in the same manner as provided for naval courts-martial, and shall have power to take testimony.

In the case of a board of medical examiners, the physical examination of a candidate for promotion shall relate only to his qualifications to perform the duties of the grade to which he seeks promotion and not to those of any other grade.

In the case of a statutory examining board, the board shall have power to examine all matter on the files and records of the department in relation to any officer whose case is to be considered by them, with the exception of such matter as falls within the provisions of the following statute:

That hereafter in the examination of officers in the Navy (and Marine Corps) for promotion no fact which occurred prior to the last examination of the candidate whereby he was promoted, which has been enquired into and decided upon, shall be again enquired into, but such previous examination, if approved, shall be conclusive, unless such fact continuing shows the unsuitness of the officer to perform all his duties at sea (in the case of a candidate of the Marine Corps appearing before a board of medical examiners, at sea and in the field. 34 U. S. Code. 276, 626a, and 665.)

In the case of a naval retiring board, the board shall have power to examine all matter on the files and records of the Navy Department relating to any officer whose case is to be considered by them.

853. Board to be sworn.—The recorder is first sworn by the president. The members and the reporter, if there be one, are then sworn by the recorder, provided the recorder is an officer. In case the recorder is also a member, he is first sworn by the president as recorder. The recorder then swears the other members, and is then sworn as a member by the president. He then swears the reporter, if there be one. In case the recorder is a civilian, he is first sworn by the president. The junior member then swears the other members and is then sworn by the president. The junior member then swears the reporter, if there be one. The authority to administer the foregoing oaths is conferred by statute and the form thereof is laid out in appendix E.

The members and recorder of a supervisory examining board are *not* sworn.

854. Boards for the examination of officers of the reserve.—The proceedings of boards for the professional and physical examination of candidates for appointment, promotion, and transfer in the Naval Reserve shall be conducted in accordance with instructions issued by the Secretary of the Navy and promulgated by the Bureau of Navigation.

855. Records of proceedings.—The next three chapters show how the records of proceedings of boards of medical examiners, examining boards, and retiring boards are made up. The object is to show each paper and entry in the order in which it should appear in the completed record. Each separate step in the examination is given a section number to indicate clearly that it is a separate step and for ease of reference. The section numbers and headings given in this book are not to be repeated in the record of the proceedings of the board.

For the general provisions governing making up of records, see sections 500 to 525.

CHAPTER XII

BOARDS OF MEDICAL EXAMINERS

INSTRUCTIONS

860. Physical examination before promotion.—No officer shall be promoted to a higher grade on the active list, except as provided in the next paragraph, until he has been examined by a board of naval surgeons and pronounced physically qualified to perform all his duties at sea, and, in the case of a marine officer, all of his duties at sea and in the field.

The provisions of the preceding paragraph shall not exclude from the promotion to which he would otherwise be regularly entitled, any officer in whose case such medical board may report that his physical disqualification was occasioned by wounds received in the line of his duty, and that such wounds do not incapacitate him for other duties in the grade to which he shall be promoted.

861. Physical examination to precede professional.—The physical examination of a candidate for promotion or appointment shall precede the mental and professional examinations, and if he be found physically unfit he shall not be examined otherwise.

862. Medical records of officers before the selection board.—In case an officer becomes eligible for selection for promotion, and has since the last examination for promotion been subjected to severe illness, severe operation, or whose medical record in the grade he actually holds shows that a chronic disease or disability may exist, or that restoration to health from a previous disease or disability has not been complete, a special board of medical examiners will be ordered only at the request of the officer concerned. This special board will examine the officer and report on him, using the same form as is used by the board of medical examiners given herein.

The evidence which will be submitted to a selection board, relating to an officer's physical condition, will be a transcript of all medical history since date of last promotion, the reports of the boards of medical examiners when he was examined for promotion and the report of the special board, in case there be such. In case there has been no special board, then the reports of the boards of medical ex-

aminers when he was examined for promotion and a digest of his medical history in present grade will be submitted.

863. Record must show what examination was made.—Each record must state fully what physical examination of the candidate was made, and by whom, and must show the finding of the board as to the physical qualifications of the candidate. If physical defects are found to exist, the board shall give the particulars thereof, and shall state whether the condition is permanent, and how and in what degree it disqualifies, if at all.

864. Candidate for promotion; what considered.—The physical examination of a candidate for promotion shall relate only to his qualifications to perform the duties of the grade to which he seeks promotion, and not to those of any other grade.

865. Medical history.—The medical history of a candidate for promotion since the date of his last examination for promotion shall be considered in connection with his physical examination. This includes his current health record.

866. In case of severe illness, operation, or chronic disease or disability.—In every case where the medical or health record of a candidate for promotion (or for appointment, in the case of an enlisted candidate for warrant rank or of a candidate for pay clerk, or chief pay clerk), contains entry of a severe illness, operation, or chronic disease or disability, the board shall state whether restoration to health has been complete. If restoration to health has not been complete, if deleterious after effects of the illness or operation exist, if the disease remains latent, or if the disability continues, the board shall give the particulars thereof, and state whether the condition is permanent, and how and in what degree it disqualifies, if at all.

867. In the case of a candidate for appointment.—Under special circumstances, in the case of candidates for appointment, it is proper for the board of medical examiners to certify that a slight physical defect is not sufficient to disqualify, and to recommend a candidate for appointment. In making such recommendations, boards of medical examiners shall take every precaution to safeguard the best interests of the service. It is intended that use shall be made of such recommendations only when a candidate has a very slight physical defect or varies slightly from the physical standard, and, in the opinion of the board, has other qualifications for such appointment that are notably higher than the average.

868. Technical medical terms.—Wherever the board in its finding uses a technical medical term it should put in parentheses immediately following the technical term the corresponding lay term, if there be one.

869. In the case of failure of a candidate for promotion or advancement by seniority.—Any officer who upon examination for promotion or advancement by seniority or any line officer upon a promotion list who fails because of physical disability contracted in the line of duty, shall be retired with the rank to which his seniority entitled him to be promoted or advanced or for which he was selected or adjudged fitted. In such case the board shall find whether or not the physical disability was contracted in the line of duty. This finding must be recorded even though the board recommends that he be further examined at a later date. In case the board finds that the disability of the officer appearing before it was not received in the line of duty, it shall be the duty of the president of the board to so inform the officer.

870. Certificate of candidate as to his physical qualifications.—There must in every case be appended to the record of proceedings a certificate, signed by the candidate, stating his physical qualifications. This certificate must be sworn to by a candidate for appointment but not by a candidate for promotion or advancement. Enlisted men who are candidates for warrant rank are considered to be candidates for appointment.

The certificate is not a mere matter of form, even though the candidate is in the naval service and has been doing duty, as it is intended to be the candidate's statement of his belief that he has no physical ailment of any kind, or only such as set forth in his statement. The onus of establishing physical fitness in all cases is on the candidate, and it is in view of this principle that this statement upon this point is required.

871. Authentication and transmission of record.—The record shall be signed by all the members and the recorder. It shall be complete in every respect and shall be forwarded direct to the Office of the Judge Advocate General, except that in the case of a candidate for appointment as assistant paymaster, chief pay clerk, pay clerk, or acting pay clerk, United States Navy, it shall be transmitted to the Naval Examining Board.

PROCEDURE

872. Cover page.—

RECORD OF PROCEEDINGS

OF A

BOARD OF MEDICAL EXAMINERS

CONVENED AT

THE NAVY DEPARTMENT, WASHINGTON, D. C. (1)

IN THE CASE OF

Lieutenant R——— F. C———, U. S. Navy

July 25, 19— (2)

(1) *Variation*.—"Convened on board the U. S. S. *New York*."

(2) This is the date of the first convening for the examination.

873. Precept.—

Office of the Secretary.

File No. ———.

DEPARTMENT OF THE NAVY,
WASHINGTON, D. C.,
July 6, 19—.

From: The Secretary of the Navy.

To: Commander C—— B. A——, Medical Corps, U. S. Navy,
President Board of Medical Examiners, Navy Department, Wash-
ington, D. C.

Subject: Precept convening a board of medical examiners.

1. A board of medical examiners, to examine and report upon the physical qualifications of such candidates for appointment or promotion as may be ordered to appear before it, is hereby ordered to convene at the Navy Department, Washington, D. C., as soon as may be practicable (3).

2. The board will consist of yourself as president, and of Commanders F—— E. D—— and J—— I. H——, and of Lieutenant Commanders M—— L. K—— and T—— S. R——, Medical Corps, U. S. Navy, as members.

3. Lieutenant G—— H. I——, U. S. Navy, will act as recorder (4).

4. The proceedings of the board will be conducted in accordance with the instructions contained in Naval Courts and Boards, and the records forwarded to the Office of the Judge Advocate General of the Navy, direct.

5. Changes in membership of this board may legally be made only by authority of the Convening Authority in each case.

6. A certified copy only of this precept will be attached to the record of proceedings of the board in each case.

7. Any two or more members of this board may act in any one case.

8. The junior member present of this board will act as recorder at any time during the temporary absence of the designated recorder.

C—— A. S——,
Secretary of the Navy.

A true copy. Attest:

T—— S. R——,

Lieutenant Commander, Medical Corps, U. S. Navy,
Recorder.

A

(3) Variation.—“Pursuant to the authority vested in me by Secretary of the Navy (Department's File ———, dated ———), a board of medical examiners * * *.”

(4) Variation.—“Lieutenant Commander T—— S. R——, Medical Corps, U. S. Navy, will act as recorder.”

874. Modification to precept.—

Office of the Secretary.

File No. ———.

DEPARTMENT OF THE NAVY
WASHINGTON, D. C.*July 18, 19—.*

From: The Secretary of the Navy.

To: Commander C—— B. A——, Medical Corps, U. S. Navy.
President Board of Medical Examiners, Navy Department,
Washington, D. C.

Subject: Change in membership of board.

1. Lieutenant Commander P—— O. N——, Medical Corps, U. S. Navy, is hereby appointed a member of the board of medical examiners of which you are president, convened at the Navy Department, Washington, D. C., by precept of July 6, 19—, vice Lieutenant Commander M—— L. K——, Medical Corps, U. S. Navy, hereby relieved.

C—— A. S——,
Secretary of the Navy.

A true copy. Attest:

T—— S. R——,

Lieutenant Commander, Medical Corps, U. S. Navy, B
Recorder.

875. Letter to candidate.—

DEPARTMENT OF THE NAVY

BUREAU OF NAVIGATION

WASHINGTON, D. C.

July 29, 19—.

From: Bureau of Navigation.

To: Lieutenant R—— F. C——, U. S. Navy, U. S. Navy Yard,
Washington, D. C.

Via: Commandant, U. S. Navy Yard, Washington, D. C.

Subject: Examination for promotion to the grade of lieutenant commander (5).

Inclosure: N. Nav. 314.

1. At 9 a. m., August 8, 19—, you will report to the president of a board of medical examiners at the Navy Department for physical examination preliminary to promotion to the grade of lieutenant

(5) *Variation.*—(In the case of orders to an officer of the staff corps.) "Examination for advancement to the grade of surgeon with the rank of lieutenant commander."

commander, in accordance with 34 U. S. Code 274. Your attention is invited to article 138 (2), Navy Regulations.

2. Upon the completion of this examination, or when otherwise directed by proper authority, you will report to the president of the naval examining board for the examination required by 34 U. S. Code 274.

3. This is in addition to your present duties.

T—— W——

A true copy. Attest:

T—— S. R——,

Lieutenant Commander, Medical Corps, U. S. Navy, C
Recorder.

876. Board meets.—

BOARD OF MEDICAL EXAMINERS,
NAVY DEPARTMENT

WASHINGTON, D. C.

August 8, 19—. (6)

The board met at 9 a. m., this day, (7) pursuant to orders, copies prefixed marked "A" and "B."

Present:

Commander J—— I. H——, Medical Corps, U. S. Navy;

Lieutenant Commander P—— O. N——, Medical Corps,
U. S. Navy, members; and

Lieutenant Commander T—— S. R——, Medical Corps, U. S.
Navy, Member and recorder.

877. Candidate reports.—

Lieutenant R—— F. C——, U. S. Navy, reported for examination in obedience to an order, copy prefixed marked "C" (8).

878. Precept read and right of challenge accorded.—

The precept and the modification thereof were read by the recorder, and there was no objection to any member.

879. Board and recorder sworn.—

The board and the recorder were duly sworn.

880. Candidate's statement.—

The candidate's statement as to his physical qualifications is appended marked "D."

(6) If the examination lasts more than one day, this date is that of the day when the board reaches its findings.

(7) This date is that of the first meeting of the board in this case.

(8) Variation.—"Mr. L—— E. H—— appeared for examination under authority contained in a letter, copy prefixed marked 'C.'"

881. Medical history.—

The medical history of the candidate is appended marked "E."

882. Candidate examined.—

Each member of the board then made a careful physical examination of the candidate and found no trace of any ailment or disability now existing (9).

883. Certification of board (*Candidate for Promotion*).—

We hereby certify that Lieutenant R—— F. C——, U. S. Navy, is (not) physically qualified to perform all his duties at sea. (For candidate for original appointment see variation 6, below.) (10).

(9) *Variation 1.*—" * * * and found the following defect(s): * * *. The board is of the opinion, however, that this condition is not sufficient to disqualify and found no trace of any other ailment or disability now existing."

Var. 2.—" * * * examination of the candidate, giving special attention to the following entries contained in his medical history, viz: febris continua simplex (———), syphilis, tuberculosis (or, as the case may be), and found no trace of any ailment or disability now existing, and is of the opinion that his restoration to health has been complete."

Var. 3.—" * * * is of the opinion that his restoration to health has not been complete since he developed tuberculosis in 1931 (his operation for ——— in 1932) (or, as the case may be), and that this disease remains latent (that the following after effects exist, or, as the case may be), and that this condition is permanent (temporary). The board is of the opinion, however, that this condition is not sufficient to disqualify, and found no trace of any other ailment or disability now existing."

Var. 4.—" * * * and found that the candidate has lost his right arm at the elbow; that such disability was occasioned by a wound received in the line of his duty; and that it does not incapacitate him for other than sea duties (in the case of an officer of the Marine Corps; and/or duties in the field), in the grade to which he is to be promoted; that there is no other ailment or disability now existing."

Var. 5.—(In the case of candidate for appointment.) " * * * and found that he is deficient in weight and mean chest measurement, according to the prescribed naval standard—height 67 inches, weight 130 pounds (4 pounds underweight), mean chest circumference 33 (1 inch under standard). (Or, such explanation of the general physical condition of the candidate as will enable the department to understand exactly in what respects the candidate is physically deficient.)"

(10) *Variation 1.*—(To be used in the examination of an officer of the Marine Corps.) "We hereby certify that Captain C—— C. H——, U. S. Marine Corps, is (not) physically qualified to perform all his duties at sea and in the field."

Var. 2.—(To be used in the case of an officer due for promotion or advancement by seniority or a line officer on a promotion list who has failed to qualify physically for promotion or advancement.) "We hereby certify that Ensign R—— F. C——, U. S. Navy, is incapacitated for service by reason of (state the physical disability) contracted (not) in the line of duty, and he is therefore not qualified to perform all his duties at sea."

Var. 3.—"We hereby certify that Ensign R—— F. C——, U. S. Navy, is not physically qualified to perform all his duties at sea owing to ———, contracted (not) in the line of duty, and we recommend that he be further examined physically in ——— months in order to ascertain the extent of his incapacity."

Var. 4.—"We hereby certify that Lieutenant R—— F. C——, U. S. Navy, is physically qualified to perform all his duties except those at sea; and that his physical disqualification was occasioned by a wound (wounds) received in the line of his duty."

Var. 5.—"We hereby certify that Captain C—— C. H——, U. S. Marine Corps, is physically qualified to perform all his duties except those in the field (or, at sea; or, at sea and in the field); and that his physical disqualification was occasioned by a wound (wounds) received in the line of his duty."

Var. 6.—(To be used in the examination of candidates for appointment, including enlisted candidates for the grade of warrant officer and candidates for the grades of pay

884. Documents appended: Candidate's statement.—

BOARD OF MEDICAL EXAMINERS

NAVY DEPARTMENT

WASHINGTON, D. C.,

August 8, 19—.

I hereby certify that I am, to the best of my knowledge and belief, physically qualified to perform all the duties at sea (in the case of an officer of the Marine Corps: at sea and in the field) in the grade (11) for which I am a candidate for promotion, and that I am at present free from all bodily ailments (except ——). (12).

R—— F. C——.

D

885. Same: Medical history and record of service.—

(Here is appended the medical history and record of service since the last examination of the candidate.)

E

clerk and chief pay clerk.) "We hereby certify that H—— H. C—— (rating, if an enlisted candidate) is (not) physically qualified for appointment in the United States Navy as an assistant paymaster (boatswain) (assistant surgeon, or, as the case may be)."

(11) In the case of an officer of the staff corps this should be "rank" instead of "grade."

(12) *Variation.*—(To be used in the examination of a candidate for appointment including enlisted candidates for the grade of warrant officer.) "I hereby certify that I am, to the best of my knowledge and belief, physically qualified to perform all the duties at sea (or, at sea and in the field) in the grade for which I am a candidate for appointment, and that I am at present free from all bodily ailments (except ——)." (This certificate *must* be sworn to.)

CHAPTER XIII

NAVAL EXAMINING BOARDS

INSTRUCTIONS FOR STATUTORY BOARD

890. The professional examinations will be conducted in accordance with instructions that may be contained in or accompany the precept convening the board or which may be otherwise issued.

891. **Physical examination precedes professional.**—Before proceeding with the professional examination the president of the examining board shall ascertain that the candidate has been found physically qualified by a board of medical examiners. When the contrary is found to be the case all papers in the case will be returned to the Bureau of Naval Personnel.

892. **Right of candidates to be present.**—Any officer whose case is to be acted upon by an examining board shall have the right to be present, if he so desires, and to submit a statement of his case on oath.

893. **No officer to be rejected without examination.**—No officer shall be rejected until after public examination of himself and of the records of the Navy Department in his case, unless he fails, after having been duly notified, to appear before the board.

894. **Consideration of matter relative to candidate.**—There shall be submitted to the board for its consideration all matter on the files and records of the Department which relate in any way to the mental, moral, or professional fitness of the officer whose case is being inquired into, with exception of such matter as falls within the provisions of 34 U. S. Code 276 and 626a.

895. **All matters to be investigated.**—Entries in the medical history of the candidate or other accompanying papers, not within the prohibition of the above-mentioned statutes, shall be investigated by an examining board.

896. **Candidate to be accorded right to call witnesses and to testify.**—The candidate shall be fully and frankly informed by the board of any doubt it may entertain at any time as to his fitness for promotion, in order that he may take advantage of his right to call witnesses and to testify in his own behalf.

897. **Summoning witnesses.**—All witnesses before examining boards shall be summoned via the convening authority. But, as a general rule, it may be assumed that, had the candidate's professional examination and record been satisfactory to the board, it would have been

unnecessary for him to summon witnesses in his behalf. Therefore, except under unusual circumstances, the convening authority can do no more than grant permission to an officer under his command, who is summoned as a witness, to be absent from his station and duty; and all the expenses of the aforesaid witness must be borne by the officer who desires to have him summoned.

998. Witnesses before the board.—In case witnesses are called they are examined in the same general manner as witnesses before a court martial. Any officer may be called before the board to give evidence, if deemed necessary.

999. Witnesses, before testifying, shall be sworn.—The president of the board shall administer the oath prescribed in Appendix E.

900. Witness examined on written interrogatories.—Such questions as the candidate may reasonably request to have asked by means of written interrogatories regarding any particular matter or incident touching his fitness for promotion may be addressed by the Bureau of Navigation (Marine Corps) to any officer having knowledge of the facts, or by the convening authority if such officer be under his command. Whenever such a request is deemed unreasonable by the board, it should at once be referred to the convening authority for decision.

901. Officers junior in rank to candidate as witnesses.—No inquiry as to matter of opinion shall be put to any officer who is junior in rank to the candidate for promotion.

902. Candidate as a witness.—The candidate is authorized, if he so desires, to submit a statement to the board. Such statement is recorded as in a court martial. Inasmuch, however, as mere ex parte statements of persons not subjected to cross-examination are of little weight as evidence, the proper procedure is to permit the candidate, if he so desires, to take the stand as a witness. Under such circumstances, he is, of course, subject to cross-examination. Likewise, the board may call the candidate as a witness.

903. Naval War College course.—In the case of a line officer above the grade of lieutenant the examining board will ascertain and state in the record whether or not the candidate has taken any course of instruction at the Naval War College, and, if so, for what period of time and, to what extent he took advantage of his opportunities.

904. The responsibility of the officer under examination.—The onus of establishing professional fitness shall be held to rest entirely upon the officer under examination. The mental and moral fitness of the candidate shall be assumed unless a doubt shall be raised on either head, in the mind of any member of the board, from the answers contained in any of the interrogatories or reports on fitness, from

the general reputation of the candidate, or from other evidence of record.

905. Rule governing board's recommendation.—It shall be held obligatory upon any member of the board to decline to recommend the promotion of any officer until he is satisfied of the officer's entire mental, moral, and professional fitness for promotion. The board, while careful not to do injustice to any officer regarding whom there is any doubt, shall take equal care to safeguard the honor and dignity of the service, recommending no officer for promotion as to whose fitness a doubt exists. In case of dissent the record must show those of the members who concurred in, and those who dissented from, the opinion of the board, with the reasons for dissent.

906. Candidate not to be discharged before completion of case.—Care shall be taken not to discharge a candidate until his case is fully completed. This applies particularly to cases where there are unfavorable reports or other evidence.

907. Board must state cause of candidate's failure.—Whenever the board fails to recommend a candidate for appointment or promotion, it must state on the record whether such failure is owing to his mental, moral, or professional unfitness, or in the case of a candidate for the Supply Corps, his mental, moral, or physical unfitness. When the unfitness of a candidate for promotion is "by reason of drunkenness, or from any other cause arising from his own misconduct", the record must so state and must also show that the candidate was "informed of and heard upon the charges against him", and it must further state whether or not the moral disqualification of the candidate is the result of his own misconduct.

908. Record must show specifically that unfavorable evidence was considered.—When there is evidence of an unfavorable nature, the record must show affirmatively that the board fully considered this unfavorable evidence. It is not sufficient to set forth in general terms that unfavorable matter was considered, but the specific unfavorable report or other matter must be set forth in full, together with the reasons that guided the board in its recommendation.

909. Authentication and transmission of record.—The record of proceedings shall be signed by all the members acting in the case and the recorder and be transmitted, together with all reports of qualifications and other documentary evidence which has been before the board, to the Office of the Judge Advocate General direct.

910. Revision.—The record of proceedings of an examining board may be returned to the board for revision in any particular which the department may deem necessary. In such case the provisions relating to revision of courts martial, in so far as practicable, govern.

PROCEDURE

911. Cover page.—

RECORD OF PROCEEDINGS

OF A

NAVAL EXAMINING BOARD

CONVENED AT (1)

THE NAVY DEPARTMENT, WASHINGTON, D. C.

IN THE CASE OF

Lieutenant R—— F. C——, U. S. Navy

December 4, 19— (2)

(1) *Variation*.—"Convened on board the U. S. S. *New York*."

(2) This is the date of the first convening for the examination.

912. Precept.—

NAVY DEPARTMENT,
WASHINGTON, D. C.,
October 13, 19—.

From: The Secretary of the Navy.

To: Rear Admiral A—— B. C——, U. S. Navy, President,
Naval Examining Board, Navy Department, Washington, D. C.

Subject: Precept convening a naval examining board.

1. A naval examining board for the examination of such candidates for appointment or promotion as may be ordered to appear before it is hereby ordered to convene at the Navy Department, Washington, D. C., as soon as may be practicable (3).

2. The board will consist of yourself as president, and of Captains D—— E. F——, G—— H. I——, J—— K. L——, and Commanders M—— N. O—— and P—— S. R——, U. S. Navy, as members.

3. Mr. S—— T. W—— will act as recorder (4).

4. The junior member present may act as recorder in the absence of Mr. W——.

5. Any three members present, provided that they are senior in rank to the officer under examination, are empowered to act in any one case.

6. The proceedings of the board will be conducted in accordance with the instructions contained in Naval Courts and Boards. The completed record in each case will be forwarded to the office of the Judge Advocate General direct.

G—— W——,
Acting Secretary of the Navy.

A true copy. Attest:

S—— T. W——,
Recorder.

A

913. Modification to precept.—

File No. ——.

NAVY DEPARTMENT,
WASHINGTON, D. C.,
November 20, 19—.

From: The Secretary of the Navy.

To: Rear Admiral A—— B. C——, U. S. Navy, President, Naval
Examining Board, Navy Department, Washington, D. C.

Subject: Change in membership of board.

(3) *Variation*.—"Pursuant to the authority vested in me by the Secretary of the Navy (Department's file ——, dated ——), a naval examining board * * *."

(4) *Variation*.—"Lieutenant V—— M. ——, U. S. Navy, will act as recorder."

1. Captain B—— N. P——, U. S. Navy, is hereby appointed a member of the naval examining board of which you are president, convened by the Navy Department's precept dated October 13, 19—, file no. —, vice Captain D—— E. F——, U. S. Navy, hereby relieved.

T—— W——,
Secretary of the Navy.

A true copy. Attest:

S—— T. W——,
Recorder.

B

914. Letter to candidate.—

NAVY DEPARTMENT,
WASHINGTON, D. C.,
November 30. 19—.

From: Bureau of Navigation.

To: Lieutenant R—— F. C——, U. S. Navy, U. S. Navy Yard, Washington, D. C.

Via: The Commandant, U. S. Navy Yard, Washington, D. C.

Subject: Examination for promotion to the grade of lieutenant commander in the U. S. Navy. (5).

Inclosure: N. Nav. 314.

1. At 9 a. m., December 3, 19—, you will report to the president of a board of medical examiners at the Navy Department for physical examination preliminary to promotion to the grade of lieutenant commander, in accordance with 34 U. S. Code 271. (6).

2. Upon the completion of this examination, if found physically qualified, you will report to the president of the naval examining board, Navy Department, for the necessary examination required by 34 U. S. Code 274.

3. This is in addition to your present duties.

T—— W——.

A true copy. Attest:

S—— T. W——,
Recorder.

C

(5) *Variation.*—(in the case of orders to an officer of the staff corps.) "Examination for advancement to the grade of surgeon with the rank of lieutenant commander."

(6) *Variation.*—(In the case of a marine officer) "34 U. S. Code 665 * * *"

(The usual indorsements follow the above letter, including an indorsement signed by the president of the board of medical examiners to the effect that the candidate has been found physically qualified for promotion or appointment.)

915. Board meets.—

NAVAL EXAMINING BOARD, NAVY DEPARTMENT,
WASHINGTON, D. C.
December 7, 19— (7).

The board met at 9 a. m., this day (8), pursuant to orders, copies prefixed marked "A" and "B."

Present:

Captain B—— N. P——, U. S. Navy;

Captain G—— H. I——, U. S. Navy;

Commander M—— N. O——, U. S. Navy, members; and

Mr. S—— T. W——, recorder.

916. Candidate reports.—

Lieutenant R—— F. C——, U. S. Navy, reported for examination in obedience to an order, copy prefixed marked "C."

917. Precept read and right of challenge accorded.—

The precept and modification thereof were read by the recorder. There was no objection to any member (9).

918. Board and recorder sworn.—

The board and the recorder were duly sworn.

919. Candidate ready for examination.—

The candidate stated that he was ready for examination (10).

920. Conduct of examination.—

The board then conducted the examination of the candidate.

921. Written examination appended.—

The written examination, together with the questions asked, is appended, pages marked "1" to "—."

922. Board's opinion of service record in grade.—

The board's individual opinion of the candidate's service record in grade is appended, marked "D."

923. Papers transmitted to board considered.—

A communication, appended, marked "E", was received from the Navy Department transmitting the papers named therein, which were duly considered by the board and which, with the exception of those intended for the board of medical examiners, are appended, marked "30" to "59."

(7) This date is that of the day that the board reaches its findings and makes its recommendations.

(8) In case the examination takes more than one day, this date is that of first meeting.

(9) Variation.—"The candidate objected to Commander M—— N. O——, U. S. Navy, as a member on account of * * * (*state reasons*)."

(10) Variation.—"The candidate stated that he was not ready for examination, and the facts of the case were reported to the Bureau of Navigation, copy of letter appended, marked '—.'"

"The board then, at — a. m., adjourned until ——. (Or, took up the examination of the next candidate, or as the case may be.)"

924. Candidate accorded right to call witnesses and to testify.—

The candidate did not desire to call any witnesses, to take the stand as a witness in his own behalf, or to make a statement.

925. Naval War College course.—

From the evidence before the board it appears that the candidate took a short summer course of instruction at the Naval War College in 19— and has completed a correspondence course of instruction. It appears that the candidate took advantage of his opportunities to an excellent degree (11).

926. Examination concluded.—

The examination of the candidate having been concluded, he was discharged from further attendance.

927. Finding and recommendation.—

The board, having deliberated on the evidence before it, decided that the mental, moral, and professional fitness of the candidate to perform all his duties at sea has been established to its satisfaction (12).

928. Certification.—

We hereby certify that Lieutenant R—— F. C——, U. S. Navy, has the mental, moral, and professional qualifications to per-

(11) *Variation.*—"It does not appear from the evidence before the board that the candidate has taken any course of instruction at the Naval War College."

(12) *Variation 1.*—(To be used in the examination of any candidate for appointment as an officer in the Navy or Marine Corps, except the Supply Corps of the Navy.) "The Board, having deliberated on the evidence before it, found that the candidate has obtained a general average of—percent and decided that his mental, moral, and professional qualifications have been established to its satisfaction." (For acting pay clerk " * * * mental, moral, professional, and physical * * * ")

Var. 2.—(To be used in the examination of a candidate for appointment in the Supply Corps) "The board, having deliberated on the evidence before it, found that the candidate has obtained a general average of — percent and decided that his mental, moral, and physical qualifications have been established to its satisfaction."

Var. 3.—(To be used in the examination of a candidate for appointment as (promotion to) pay clerk, or chief pay clerk) "The board, having deliberated on the evidence before it, decided that the mental, moral, professional, and physical qualifications of the candidate have been established to its satisfaction."

Var. 4.—" * * * has been established to its satisfaction. In arriving at its conclusion as to the professional (moral) fitness of the candidate, the board fully considered the unfavorable report of fitness from October 1, 19— to March 31, 19—, as follows: " * * * " (The record of proceedings of the general court martial before which the candidate was tried on October 9, 19—), but in view of his otherwise excellent record as indicated by his reports on fitness (or, state other reasons), the board came to a favorable conclusion as to his professional (moral) fitness notwithstanding such evidence."

Var. 5.—"The board, having deliberated on the evidence before it, decided that the mental and moral fitness of the candidate to perform all his duties at sea has been established to its satisfaction; but that owing to deficiency in the subject of ———, as shown by his written examination papers hereto appended (or, as the case may be), his professional fitness has not been so established."

Var. 6.—"The board, having deliberated on the evidence before it, and having determined that from such evidence it appears *prima facie* that Commander J—— I. K——, U. S. Navy, is not morally qualified for promotion by reason of his own misconduct (drunkenness, overindulgence in intoxicants, or, as the case may be), he was

form efficiently all the duties, both at sea and on shore, of the grade to which he is to be promoted, to wit, lieutenant commander, and recommend him for promotion (13).

929. Authentication of record.—

B—— N. P.——,
Captain, U. S. Navy, President.

G—— H. I——,
Captain, U. S. Navy, Member.

M—— N. O——,
Commander, U. S. Navy, Member.

S—— T. W——,
Recorder.

called before the board and informed of and given an opportunity to be heard upon the charges against him as follows:

"That on March 17, 19—, he was under the influence of intoxicating liquor on board the U. S. S. ——, while executive officer of that vessel.

"The claim of H—— and B—— Co., Brooklyn, N. Y., dated May 16, 19—, as follows: * * *

"Commander K—— asked permission to introduce Captain A—— R. W——, U. S. Navy, as a witness.

"The request was granted; the witness entered and was duly sworn:

(Testimony recorded as for defense in general court martial.)

"Commander K——, the candidate, was, at his own request, called as a witness and was duly sworn, etc.

"The board was cleared, and after consideration of his case, the board was opened and the candidate was discharged from further attendance.

"The board was then cleared for deliberation and decided that the mental and professional fitness of the candidate to perform all his duties at sea has been established to its satisfaction; but that by reason of drunkenness (or, as the case may be) which is the result of his own misconduct, his moral fitness has not been so established."

(13) (This form is that prescribed by law and must be used in the case of all line officers.)

Variation 1.—(In case of rejection.) We hereby certify that Commander J—— I. K——, U. S. Navy, has the mental and moral but not the professional (or, as the case may be) qualifications to perform efficiently all the duties, both at sea and on shore, of the grade to which he is to be promoted, to wit, captain, and do not recommend him for promotion."

Var. 2.—(To be used in the examination of officers of the staff corps.) "We hereby certify that Surgeon N—— K. L——, with the rank of lieutenant commander, Medical Corps, U. S. Navy, has the mental, moral, and professional qualifications necessary to perform efficiently all the duties, both at sea and on shore, of the rank to which he is to be advanced, to wit, medical inspector, with the rank of commander, Medical Corps, U. S. Navy, and recommend him for advancement."

In the case of an examination of a candidate for appointment the board must certify that he has the required qualifications for appointment and must recommend him for appointment.

Var. 3.—(To be used in the examination of candidates for appointment in the Navy and Marine Corps, candidates for appointment in all warrant grades except acting pay clerk, pay clerk, and chief pay clerk, and candidates for appointment in all staff corps except the Supply Corps.) "We hereby certify that N—— A. K—— is mentally, morally, and professionally qualified for appointment in the United States Navy as an assistant surgeon (boatswain) and recommend him for appointment."

Var. 4.—(To be used in the examination of a candidate for appointment in the Supply Corps.) "We hereby certify that N—— A. K—— is mentally, morally, and physically qualified for appointment in the United States Navy as an assistant paymaster and recommend him for appointment."

Var. 5.—(To be used in the examination of a candidate for appointment as acting pay clerk, pay clerk, or chief pay clerk in the Navy.) "We hereby certify that N—— A.

930. Documents appended.—

(Here is appended the written examination, together with the questions asked.)

1 (to) —.

931. Same: Board's opinion of service record.—

(Here is appended the board's individual opinion of the candidate's service record in grade.)

D

932. Same: Letter transmitting matter in files.—

NAVY DEPARTMENT, BUREAU OF NAVIGATION

WASHINGTON, D. C.

November 30, 19—.

From: Bureau of Navigation.

To: President, Naval Examining Board, Navy Department, Washington, D. C.

Subject: Transmitting papers for consideration in connection with examination for promotion.

Inclosure: No. ———.

1. Lieutenant R—— F. C——, U. S. Navy, having been ordered to report to you on the 3rd day of December 19—, for examination preliminary to promotion, the Bureau transmits herewith all matter on the files and records of the Navy Department which relate in any way to his fitness for promotion, viz:

One record of service.

Nineteen reports on the fitness of officers.

One record of service and one medical record to be transmitted to the board of medical examiners.

K—— (Acting Pay Clerk N—— A. K——, or, Pay Clerk N—— A. K——, U. S. Navy) is mentally, morally, professionally, and physically qualified for appointment in the United States Navy as an acting pay clerk (pay clerk, or, chief pay clerk) and recommend him for appointment."

Var. 6.—(Majority and minority opinion.) "We hereby certify that Commander H—— E. C——, U. S. Navy, has the mental, moral, and professional qualifications to perform efficiently all the duties, both at sea and on shore, of the grade to which he is to be promoted, to wit, captain, and recommend him for promotion.

B—— N. P——,

Captain, U. S. Navy, President.

M—— N. O——,

Commander, U. S. Navy, Member.

"From an inspection of the written examination of the candidate, and from the answers to interrogatories sent to officers under whom the candidate has served, I am constrained to differ with the majority of the board as to the professional fitness of the candidate to perform all his duties at sea.

"I hereby certify that Commander H—— E. C——, U. S. Navy, has the mental and moral, but not the professional qualifications to perform efficiently all the duties, both at sea and on shore, of the grade to which he is to be promoted, to wit, captain, and do not recommend him for promotion.

G—— H. I——,

Captain, U. S. Navy, Member.

S—— T. W——, Recorder.

2. The foregoing papers are to be appended to the records of the boards.

By direction.

E

(Here are appended the papers transmitted with the foregoing communication.)

30 (to) 59.

PROCEEDINGS—STATUTORY BOARD

PASSING UPON A SUPERVISORY EXAMINATION

933. Cover page and precept.—

(These are the same as given in sections 911 and 912.)

934. Proceedings.—

NAVAL EXAMINING BOARD,

NAVY DEPARTMENT

WASHINGTON, D. C.,

December 7, 19—.

The board met at 9 a. m., this day, pursuant to orders, copies pre-fixed marked "A" and "B."

Present:

Captain B—— N. P——, U. S. Navy;

Captain G—— H. I——, U. S. Navy; and

Commander M—— N. O——, U. S. Navy, members; and

Mr. S—— T. W——, recorder.

The board convened for consideration of the case of Lieutenant R—— F. C——, U. S. Navy, whose written professional examination preliminary to his promotion had been conducted before a supervisory board.

The recorder read the precept and the modification thereof.

The board and the recorder were duly sworn.

Certain papers received from the supervisory board are appended marked "C" to "G."

The written examination of the candidate is appended, pages "1" to "60."

The board's individual opinion of the candidate's service record in grade is appended marked "H."

A communication, appended marked "I", was received from the Navy Department transmitting the papers named therein, which were duly considered by the board and are appended marked "61" to "85."

The board, having deliberated on the evidence before it, decided that * * * (14).

We hereby certify that * * * (15).

B—— N. P——,
Captain, U. S. Navy, President.

G—— H. I——,
Captain, U. S. Navy, Member.

M—— N. O——,
Commander, U. S. Navy, Member.

S—— T. W——,
Recorder.

STATUTORY BOARD—EXAMINATION ON RECORD ONLY

935. Examination on record.—In cases where, owing to the exigencies of the service, it is not desirable to order a candidate to appear before an examining board, such candidate may be examined on his record only. Special authority of the Navy Department must be obtained in each such case. But, if the board deem it necessary, in order to establish the fitness of the candidate, that he appear personally before it, the Department shall be so informed, with the reasons therefor. The candidate may not lawfully be rejected without a personal examination.

936. Procedure.—

NAVAL EXAMINING BOARD,
NAVY DEPARTMENT,
WASHINGTON, D. C.,
December 7, 19—.

The board met at 10 a. m., this date, pursuant to orders, copies prefixed marked "A" and "B."

Present:

Captain B—— N. P——, U. S. Navy;

Captain G—— H. I——, U. S. Navy; and

Commander M—— N. O——, U. S. Navy, members; and

Mr. S—— T. W——, recorder.

The board convened for consideration of the case of Lieutenant R—— F. C——, U. S. Navy, preliminary to his promotion.

The precept and the modification thereof were read by the recorder.

The board and the recorder were duly sworn.

A letter from the Navy Department, directing the examination of Lieutenant C—— on his record only, is appended marked "C."

(14) The finding and variations thereof are the same as those in sec. 927.

(15) The certification is the same as shown in sec. 928.

A communication, appended marked "D", was received from the Navy Department, transmitting the papers named therein which are appended marked "1" to "29."

The board, having deliberated on the evidence before it, and having taken into consideration their association with the candidate in the Navy and his reputation as an officer, decided that his mental, moral, and professional fitness to perform all his duties at sea has been established to its satisfaction (16).

We hereby certify that * * *

B—— N. P——,
Captain, U. S. Navy, President.

G—— H. I——,
Captain, U. S. Navy, Member.

M—— N. O——,
Commander, U. S. Navy, Member.

S—— T. W——,
Recorder.

SUPERVISORY EXAMINING BOARD

937. When ordered.—In certain cases, where deemed desirable, a supervisory board may be appointed to supervise the written professional examination, preliminary to promotion, of such officers as may be ordered to report for such examination and waive their right to appear in person before a statutory board, except in the event of their being found disqualified in the examination by the statutory board.

938. Oaths; not administered.—Neither the members nor the recorder of a supervisory board are sworn.

939. Result of physical examination.—It shall be the duty of the president of the board to ascertain that the candidate has been found physically qualified by a board of medical examiners before proceeding with the professional examination.

940. Candidate's waiver and objection to statutory board.—The board will ask each candidate if he has any objection to the statutory naval examining board which will be ordered to conduct his examination and to make final recommendation in his case. If the candidate has no such objection, he will be permitted to waive his right to appear in person before the statutory board, as conferred by 34 U. S. Code 277, and, after the candidate has signed such waiver and sworn to it before the president of the board,

(16) *Variation.*—"The board, having deliberated on the evidence before it, deems it necessary that the candidate appear personally before it in order to establish his fitness for promotion for the reason that the board desires to inquire further into the matter of the entry in his report of fitness dated March 31, 19—, to the effect that * * *"

the board will proceed with the prescribed examination. Although it is held that the effect of waiving the right to be present in person before a naval examining board is to deprive the officer being examined of the right to appear before a second board, as a matter of policy the department will, in the case of failure on examination before a supervisory board, order the candidate to appear before a statutory board for an examination de novo. (See in this connection 27 Op. Atty. Gen. 257.)

941. Procedure.—A supervisory board need not keep a record of its daily proceedings; but such proceedings shall be in accordance with the procedure laid down for naval examining boards in so far as practicable.

942. Documents prefixed and appended.—Upon the completion of the examination, a certificate, signed by each member of the board, stating whether or not the candidate has any objection to his examination for promotion being conducted by the statutory naval examining board, and that he has received no outside assistance during its progress, will be prefixed to the record of proceedings.

The candidate's waiver of his right to appear in person, together with a copy of the precept and of every order or notice addressed to the board or to the candidate, certified by the recorder, shall be prefixed to the record.

The examination papers shall be appended to the record.

None of the documents is marked by the supervisory board.

PROCEEDINGS—SUPERVISORY BOARD

943. Cover page.—

(This follows that shown in section 911.)

944. Certificate of board.—

CRUISER DIVISION TWO, BATTLE FORCE, U. S. S. MEMPHIS

SAN DIEGO, CALIFORNIA,

November 3, 19—.

The candidate stated that he had no objection to his examination being conducted by the naval examining board, Navy Department, Washington, D. C., and it is hereby certified that he received no unauthorized assistance during the progress of the examination.

E—— C. K——,

Lieutenant Commander, U. S. Navy, President.

F—— R. K——,

Lieutenant, U. S. Navy, Member.

H—— P. L——,

Lieutenant (jg), U. S. Navy, Member and Recorder.

945. Candidate's waiver.—

CRUISER DIVISION TWO, BATTLE FORCE, U. S. S. MEMPHIS,
 SAN DIEGO, CALIFORNIA,
October 22, 19—.

Having been notified of the time and place of meeting of the examining boards which are to conduct my examination for promotion, I hereby waive all right to be present in person before, or to be heard by, the examining board which is finally to pass upon my case, except in the event of my being found disqualified. In taking this action I am fully cognizant of my rights under 34 U. S. Code 277.

P—— Q. R——,
Ensign, U. S. Navy.

Subscribed and sworn to before me this 22nd day of October, 19—.

E—— C. K——,
*Lieutenant Commander, U. S. Navy, President,
 Supervisory Examining Board.*

946. Precept.—

File No. ———.

CRUISERS, BATTLE FORCE, U. S. S. RICHMOND, FLAGSHIP

SAN DIEGO, CALIFORNIA,
October 1, 19—.

From: Commander Cruisers, Battle Force.

To: Lieutenant Commander E—— C. K——, U. S. Navy.

Via: Commanding Officer, U. S. S. *Memphis*.

Subject: Convening supervisory examining board.

1. Pursuant to the authority vested in me by the Secretary of the Navy (Department's File No. ———, dated ———) a board to supervise the written professional examination, preliminary to promotion, of such officers as may be ordered before it is hereby ordered to convene on board the U. S. S. *Memphis* at 10 o'clock a. m., Monday, October 22, 19—, or as soon thereafter as may be practicable.

2. The board will consist of yourself as president and of Lieutenant F—— R. K——, and Lieutenant (junior grade) H—— P. L——, U. S. Navy, as members. Lieutenant (junior grade) H—— P. L——, U. S. Navy, will act as recorder.

3. The board will ask the candidates if they have any objection to the Naval Examining Board, Navy Department, Washington, D. C., which will be ordered to conduct their professional examinations and to make a final recommendation in their cases to the department; and if they have no objection they will be permitted to waive their

right to appear in person before the board, as conferred by 34 U. S. Code 277, said waiver to be sworn to, to be attached to the examination papers, and to be in accordance with the form prescribed in Naval Courts and Boards.

4. Upon the completion of the examination a certificate signed by each member of the board will be attached to the papers stating whether or not each candidate has any objection to his examination being conducted by the Naval Examining Board, Navy Department, Washington, D. C., and that he has received no unauthorized assistance during its progress. The board will forward the papers by registered mail in a sealed envelope marked "Confidential" to "President, Naval Examining Board, Navy Department, Washington, D. C."

5. The procedure of the board will be in accordance with Naval Courts and Boards.

A true copy. Attest: _____.

H——— P. L———,

Lieutenant (junior grade), U. S. Navy.

Recorder.

947. Letter to candidate.—

File No. ———.

NAVY DEPARTMENT, BUREAU OF NAVIGATION

WASHINGTON, D. C.,

September 20, 19—.

From: Bureau of Navigation.

To: Ensign P——— Q. R———, U. S. Navy.

Via: Commanding Officer, U. S. S. *Memphis*.

Subject: Examination for promotion.

Inclosure: N. Nav. 314.

1. After the receipt of the necessary questions and papers, and when directed by your commanding officer, you will report to the president of a board of medical examiners for examination, preliminary to promotion to the grade of lieutenant (junior grade) in accordance with 34 U. S. Code 271.

2. Upon the completion of this examination, if found physically qualified, or when otherwise directed by proper authority, you will report to your commanding officer for a supervisory professional examination in accordance with 34 U. S. Code 274.

3. This is in addition to your present duties.

4. In the event that you are found by the naval examining board not qualified for promotion, as a result of this supervisory examina-

tion, you will be ordered to appear in person before a statutory examining board for another examination. Should you then be found qualified by the statutory board you will suffer no loss of numbers or precedence as a result of a delayed completion of your examination. (17)

A true copy. Attest:

H—— P. L——,

Lieutenant (junior grade), U. S. Navy,

Recorder.

948. Proceedings.—

BOARD TO SUPERVISE EXAMINATIONS

U. S. S. MEMPHIS

SAN DIEGO, CALIFORNIA,

November 3, 19—. (18)

The board met at 10 a. m., October 22, 19— (19), pursuant to orders, copy prefixed.

The proceedings of the board were conducted in accordance with the procedure governing naval examining boards insofar as applicable.

The examination was completed November 3, 19—.

The examination questions and the candidate's answers are appended hereto.

E—— C. K——,

Lieutenant Commander, U. S. Navy, President.

F—— R. K——,

Lieutenant, U. S. Navy, Member.

H—— P. L——,

Lieutenant (jg), U. S. Navy, Member and Recorder.

949. Documents appended.—

(All documents having to do with the procedure of the supervisory board are appended to the record.)

950. Authentication and transmission of the record.—

The record of proceedings must be signed by all the members and the recorder and forwarded in accordance with the instructions contained in the precept.

(17) (Here follow copies of all indorsements including an indorsement signed by the president of the board of medical examiners to the effect that the candidate has been examined and found physically qualified.)

(18) This is the date of the completion of the examination.

(19) This date is that of the day of first meeting of the board.

CHAPTER XIV

NAVAL RETIRING BOARD

INSTRUCTIONS

955. General instructions relative to the composition of, and authority to convene, naval retiring boards are contained in chapter XI.

956. When convened.—Whenever any officer, on being ordered to perform the duties appropriate to his commission, reports himself unable to comply with such order, or whenever, in the judgment of the President, an officer is incapacitated to perform the duties of his office, the President, at his discretion, may direct the Secretary of the Navy to refer the case of such officer to a naval retiring board convened in accordance with the provisions of section 846.

An officer who becomes physically incapacitated to perform the duties of his office after he has become due for promotion or advancement by seniority shall be examined physically by a board of medical examiners before being ordered before a retiring board. In other cases, when an officer on the active list becomes physically incapacitated to perform the duties of his office and the probable future duration of such incapacity is permanent or indefinite, he shall not be examined by a board of medical examiners pending final action on the question of his retirement, even though he has in the meantime become due for promotion or advancement.

957. Retirement of officer failing physically for promotion or advancement by seniority.—Any officer due for promotion or advancement by seniority or any line officer on a promotion list, who, upon examination by a board of medical examiners, fails because of physical disability contracted in the line of duty, shall be retired with the rank to which his seniority entitled him to be promoted or advanced, or for which he was selected or adjudged fitted. Accordingly, when such an officer has been found by a board of medical examiners to be not physically qualified for promotion or advancement (but see sec. 860) by reason of *physical disability contracted in the line of duty* and such finding has been approved, and the said officer is then ordered before a retiring board, the latter board in its finding shall specifically

state whether or not the physical disability was contracted in the line of duty, and the words *line of duty* must be used in the finding in order to bring the case within the provisions of this paragraph. Determination by a *board of medical examiners* that the officer is not physically qualified for promotion or advancement by reason of physical disability contracted in the line of duty must precede the finding of the naval retiring board that he is incapacitated for active service by reason of physical disability contracted in the line of duty in order that he may be retired in a higher rank.

958. Right to hearing before being retired.—No officer shall be retired from active service or wholly retired from the service on account of physical disability, without a full and fair hearing before a naval retiring board, if he shall demand it. This entitles an officer to appear before the board, with counsel, if desired, to introduce testimony in his own behalf, to cross-examine the witnesses examined by the board, including the medical members of the board who may have taken part in the medical examination and have stated or reported to the board the result thereof. He may also submit a statement to the board if he so desires, or take the stand as a witness, or such officer may be called as a witness by the board. If such officer fails to appear before the board when ordered, he waives the right to a hearing, and can not properly take exception to a conclusion arrived at in his absence. It is provided by statute that members of a naval retiring board "shall be sworn in each case to discharge their duties honestly and impartially." The statutory right to a "fair hearing" includes the right of challenge for cause. The procedure in case of challenge is the same as for a general court martial.

Where a retiring board has reason to believe that the officer under examination is not mentally competent, it shall request the convening authority to appoint counsel to represent him.

959. Authority and powers of retiring boards.—Retiring boards are authorized to inquire into and determine the facts touching the nature and occasion of the disability of any officer ordered before them and have such powers of a court martial and of a court of inquiry as may be necessary. In the execution of the duty thus imposed by law the board is required to ascertain the nature and occasion of the disability and its character and effect, as temporary or permanent. The investigation of a retiring board is not restricted by any statute of limitation. It may inquire into the matter of disability, however long since it may have originated. The above powers and authority are given the board in order that it may determine the facts and reach a conclusion in the matter before it. The proceedings of a retiring board being in no sense a trial, the board may properly consider documents and testimony which would

not be proper evidence before a court martial. Witnesses are examined and the testimony adduced is recorded as in a general court martial. A member need not be sworn when he is examined as a witness, his oath as member being sufficient.

960. Cause of incapacity must be reported.—When said retiring board finds an officer incapacitated for active service, it shall also find and report the cause which, in its judgment, produced his incapacity, and whether such cause is an incident of the service.

961. Line of duty and incident of the service.—The phrase “line of duty,” as used in 34 U. S. Code 390, should be construed as having the same meaning with “incident of the service” as used in 34 U. S. Code 415 and 417.

962. How determined.—Courts of law are guided by the axiom that an accused is innocent until he is proved guilty. It does not, however, follow that, in the case of a retiring board, a physical defect is assumed to have resulted in line of duty until the Government has proved the contrary. By statute, the retiring board is sworn to discharge its duties honestly and impartially: it is authorized to inquire into and determine facts touching the nature and occasion of disability; and upon it are conferred the powers of a court martial and court of inquiry. When it finds incapacity, it shall also find and report the cause, which, *in its judgment*, produced incapacity, and whether such incapacity is the result of an incident of the service. All questions relative to the physical condition of an officer shall be determined by the full board on all the facts. In case of dissent the majority report becomes the report of the board.

963. In case of physical disability not in the line of duty.—In case the board finds that the disability of an officer appearing before it was not received in the line of duty, it shall be the duty of the president to inform such officer, and it must be specifically stated in the record as to whether or not such disability was the result of his own misconduct.

After a retiring board has decided that *prima facie* the incapacity of an officer was not incurred in the line of duty and has afforded such officer an opportunity to be heard, it may thereupon, according to the evidence, either adhere to or change its *prima facie* finding.

964. Incapacity warranting retirement.—The physical disability must be a permanent, incurable disease, or injury of such character as absolutely to disqualify for duty on the active list. Deafness, defective vision, and incurable organic diseases are examples of such a disability. If, however, the disease be curable or of such a character as to yield to treatment, then, even though a cure may require considerable time, the disability is not permanent. The test is: Is the

disease or injury curable or incurable? If it be curable within a reasonable time, the officer should not be retired.

965. Officer discharged from further attendance.—After the officer before the board has submitted his evidence, or declared that he has nothing to offer, he shall be discharged from further attendance before the board. But care shall be taken not to discharge an officer under examination until his case is fully completed.

966. Medical members to submit written report.—After the officer under examination is discharged, the medical members shall submit a written report to the board, under oath, certifying as to the past and present physical and mental condition of the officer, stating the reasons that led them to their conclusion.

967. When officer due for promotion is found fit for duty.—When an officer who has failed to pass his physical examination for promotion comes before a naval retiring board and the retiring board finds such officer fit for duty, the medical members of said retiring board shall immediately constitute themselves a board of medical examiners and shall make a separate and independent report as to whether or not said officer is physically qualified to perform all of his duties at sea (*or*, in the case of a marine officer, at sea and in the field).

968. Authentication and transmission of the record.—The record of proceedings shall be signed by all the members and the recorder and be transmitted, together with all documents which have been before the board, to the office of the Judge Advocate General direct.

969. Index.—In case the record of proceedings of the board (exclusive of documents and exhibits appended) exceeds 20 pages in length, an index similar to that for a general court martial shall follow immediately after the cover page.

970. Revision.—In any case in which the Department deems necessary, the record may be returned to the board for a correction of its proceedings, or for a further inquiry or hearing and reconsideration of its conclusion, as in the case of a court martial. As the proceedings of a retiring board are not a trial, the board upon revision may receive new evidence.

971. Final action.—A record of the proceedings and decision of the board in each case shall be transmitted to the Secretary of the Navy, and shall be laid by him before the President for his approval or disapproval, or orders in the case.

972. Cover page.—

RECORD OF PROCEEDINGS

OF A

NAVAL RETIRING BOARD

CONVENED AT

THE NAVY DEPARTMENT, WASHINGTON, D. C.

IN THE CASE OF

Captain Q—— R. S——, U. S. Navy

March 25, 19— (1)

(1) This is the date of first convening for the examination.

973. Precept.—

File No. ———.

NAVY DEPARTMENT,

WASHINGTON, D. C.,

October 15, 19—.

From: The Secretary of the Navy.

To: Rear Admiral A—— B. C——, U. S. Navy, President, Naval Retiring Board, Navy Department, Washington, D. C.

Subject: Precept convening a naval retiring board.

1. A naval retiring board, consisting of yourself as president, and the following-named officers as additional members, viz: Rear Admiral D—— E. F——, U. S. Navy, Captain R—— S. T——, Medical Corps, U. S. Navy, Captain G—— H. K——, Medical Corps, U. S. Navy, and Captain U—— V. W——, U. S. Navy, is hereby ordered to convene at the Navy Department, Washington, D. C., as soon as may be practicable (2).

2. Mr. L—— M. N—— will act as recorder (3).

3. The board will examine and report upon such officers as may be ordered to appear before it, in conformity with the provisions of 34 U. S. Code 390 and 411 to 418.

4. In the absence of objection by the officer whose disability is to be inquired of, the board is authorized to examine officers who are senior to the nonmedical members of the board.

5. The proceedings of the board will be conducted in accordance with the instructions contained in Naval Courts and Boards, and the records forwarded to the Office of the Judge Advocate General direct.

6. A certified copy only of this precept will be attached to the record of proceedings of this board in each case.

7. Changes in the membership of this board may legally be made only by authority of the Convening Authority in each case.

A true copy. Attest:

_____,
*Secretary of the Navy.*L—— M. N——, *Recorder.*

A

974. Letter to officer to be examined.—

NAVY DEPARTMENT,

WASHINGTON, D. C.,

March 12, 19—.

From: The Secretary of the Navy.

To: Captain Q—— R. S——, U. S. Navy, U. S. Naval Academy, Annapolis, Md.

Via: The Superintendent, U. S. Naval Academy, Annapolis, Md.

Subject: Examination for retirement.

(2) *Variation.*—"Pursuant to the authority vested in me by the Secretary of the Navy (34 U. S. Code 233; file ———, dated ——— ———), a naval retiring board * * *."

(3) *Variation.*—"Lieutenant V—— M. W—— U. S. Navy, will act as recorder."

1. In accordance with the recommendation of a board of medical survey, before which you recently appeared, you will, when notified by Rear Admiral A—— B. C——, U. S. Navy, President of a Naval Retiring Board, Navy Department, Washington, D. C., that the necessary papers have arrived, report to that officer for examination for retirement in conformity with the provisions of 34 U. S. Code 411 to 418.

2. This is in addition to your present duties and upon completion of the examination you will return to Annapolis, Md., and resume your regular duties.

A true copy. Attest:

L—— M. N——,

Recorder.

B

975. Board meets.—

NAVAL RETIRING BOARD

NAVY DEPARTMENT

WASHINGTON, D. C.,

April 5, 19— (4).

The board met at 11 a. m., March 25, 19—, (5) pursuant to an order, copy prefixed marked "A".

Present:

Rear Admiral A—— B. C——, U. S. Navy;

Rear Admiral D—— E. F——, U. S. Navy;

Captain R—— S. T——, Medical Corps, U. S. Navy;

Captain G—— H. K——, Medical Corps, U. S. Navy;

Captain U—— V. W——, U. S. Navy, members; and
L—— M. N——, recorder.

976. Officer to be examined reports.—

Captain Q—— R. S——, U. S. Navy, reported in obedience to an order, copy prefixed marked "B."

977. Precept read and right of challenge accorded.—

The precept was read by the recorder and there was no objection to any member (6).

978. Board and recorder sworn.—

The board and the recorder were duly sworn.

979. Papers read.—

A communication, appended marked "C", received from the Navy Department, transmitting the papers named therein, which

(4) This date is that when the board reaches its findings.

(5) This date is that of the first meeting for this examination.

(6) Variation.—"The officer appearing before the board objected to Captain U—— V. W——, U. S. Navy, as a member on account of * * * (state reasons)."

are appended marked "3" to "45"; those marked "———" to "———" inclusive were read.

980. Medical members' examination.—

The medical members were directed to examine into the past and present physical and mental condition of Captain S——, letter of instructions appended marked "1."

981. Adjournment pending physical examination.—

Pending the physical examination, the board adjourned in this case until 11 a. m., March 26, 19—, when it reconvened; present, the entire board and the officer under examination (7).

982. Medical members give their opinions.—

Captain R—— S. T——, Medical Corps, U. S. Navy, the senior medical member of the board, reported that, in his opinion, Captain S—— is suffering from choroiditis (inflammation of the choroid of the eye), with a secondary retinitis (inflammation of the retina); that this condition is permanent, by reason of which he is incapacitated for active service in the Navy, and that his incapacity is not the result of an incident of the service (*or*, as the case may be).

Captain G—— H. K——, Medical Corps, U. S. Navy, a member, reported that he concurred in the opinion expressed by Captain T—— (8).

983. Preliminary finding (9), (9a).—

Captain S—— withdrew.

The board having deliberated on the evidence before it, and having decided that *prima facie* it appears that the incapacity of Captain Q—— R. S——, U. S. Navy, was not incurred in line of duty, he was called before the board, so informed, and given an opportunity to be heard (10).

(7) *Variation*.—"Pending the physical examination, the board took a recess until 2 p. m., this date, when it reconvened; present, the entire board and the officer under examination."

(8) *Variation*.—"Captain G—— H. K——, Medical Corps, U. S. Navy, a member, reported that he dissented from the opinion expressed by Captain T—— and that, in his opinion, * * *."

(9) If the medical members report that in their opinion the incapacity was incurred in the line of duty and the other members have no reason to dissent, this section is omitted.

(9a) *Variation*.—(Counsel for officer under examination, mentally incompetent) "The board requested the convening authority to appoint counsel for Captain S——. The board then adjourned in the case pending orders of the convening authority."

(10) *Variation*.—(In case the incapacity is the result of misconduct) "* * * was not incurred in the line of duty, but is the result of his own misconduct, he was called before the board, so informed, and given an opportunity to be heard upon the charges against him, as follows: (Insert charges)."

984. Officer under examination requests witnesses.—

Captain S—— requested a postponement in order to enable him to procure necessary witnesses in his behalf, which request was granted (11).

985. Adjournment.—

The board then adjourned in this case pending the arrival of the witnesses.

986. Board meets pursuant to adjournment.—

The board met at 2.45 p. m., March 30, 19—, pursuant to adjournment of March 26, 19—; present, the entire board and the officer under examination.

987. Examination of medical members by officer under examination (12).—

Captain S—— stated that he desired to examine the medical members.

Captain R—— S. T——, Medical Corps, U. S. Navy, the senior medical member of the board, was examined by Captain S—— as follows:

1. Q. * * *.

A. * * *.

Examined by the board:

11. Q. * * *.

A. * * *.

Reexamined by Captain S——:

15. Q. * * *.

A. * * *.

Neither Captain S—— nor the board desired further to examine this witness.

Captain T—— resumed his seat as a member.

988. Examination of witness called by officer under examination.—

(11) *Variation 1.*—Captain S—— stated that he did not desire to question the medical members, to introduce evidence, or to make a statement (and had nothing further to offer in relation to the charges). He was then discharged from further attendance."

Var. 2.—"Captain S—— was (at his own request) called as a witness and duly sworn." (Testimony is recorded as for defense in a general court martial.)

Var. 3.—"Captain S—— then submitted in evidence certain papers which were read and are appended marked '—' to '—'."

Var. 4.—"Captain S—— asked permission to introduce Mr. J—— R—— as his counsel. The request was granted and Mr. R—— entered and took seat as such."

Var. 5.—"Captain S—— requested the board to summon the following persons as witnesses. (Insert names.) The request was granted and the necessary summons issued. Pending the arrival of the witnesses, the board adjourned until * * *."

(12) A member need not be sworn when he is called as a witness, his oath as a member being sufficient.

A witness in behalf of Captain S—— entered and was duly sworn.

Examined by the recorder:

1. Q. State your name, residence, and occupation.

A. * * *, Annapolis, Md., physician.

2. Q. If you recognize the officer under examination, state as whom.

A. * * *.

Examined by Captain S——.

3. Q. * * *.

A. * * *.

Neither Captain S—— nor the board desired further to examine this witness.

The witness was duly warned and withdrew.

989. Examination of a witness called by the board.—

A witness called by the board entered and was duly sworn.

Examined by the recorder:

1. Q. State your name, rank, and present station.

A. * * *.

2. Q. If you recognize the officer under examination, state as whom.

A. * * *.

Examined by the board:

3. Q. * * *.

Neither the board nor Captain S—— desired further to examine this witness.

The witness was duly warned and withdrew.

990. Statement of officer under examination.—

Captain S—— then requested a postponement to enable him to prepare a brief of his case, which request was granted.

The board then adjourned.

The board met at 11:30 a. m., April 5, 19—, pursuant to adjournment of March 30, 19—. Present, the entire board and the officer under examination.

Captain S—— submitted three affidavits, which were read and are appended marked "46", "47", and "48."

Captain S—— submitted a statement and a brief, which were read and are appended marked "49", "50", and "51."

991. Examination concluded.—

Captain S—— had no further evidence to offer. He withdrew, after having been informed that he would receive due notification when he might regard himself as discharged from further attendance before the board.

992. Medical members report. (13).—

The medical members submitted a report, which was sworn to, read, and is appended marked "2."

993. Finding.—

The board, having deliberated upon the evidence before it, decided that Captain Q—— R. S——, U. S. Navy, is incapacitated for active service by reason of hemorrhagic retinitis (hemorrhage of the retina) of the right eye, that his incapacity is permanent and is the result of an incident of the service (14).

A—— B. C——,
Rear Admiral, U. S. Navy, President.

D—— E. F——,
Rear Admiral, U. S. Navy, Member.

R—— S. T——,
Captain, Medical Corps, U. S. Navy, Member.

G—— H. K——,
Captain, Medical Corps, U. S. Navy, Member.

U—— V. W——,
Captain, U. S. Navy, Member.

I—— M. N——,
Recorder.

(13) After the officer under examination has been discharged, the medical members will submit a written report to the board, certifying as to the past and present physical and mental condition of the officer, stating the reasons that lead to their conclusion.

(14) *Variation 1.*—"The board, having deliberated on the evidence before it, decided that Captain Q—— R. S——, U. S. Navy, is temporarily incapacitated for active service by reason of malarial poisoning, and recommends that he be granted sick leave for three months."

Var. 2.—"The board, having deliberated on the evidence before it, finds that Captain Q—— R. S——, U. S. Navy, has partial deafness, right ear; that this physical defect is not sufficient to incapacitate him for active service in the U. S. Navy at the present time and that he is fit for duty."

Var. 3.—(To be used in the case of an officer due for promotion or advancement by seniority or a line officer on a promotion list who has failed to qualify physically for promotion or advancement.) " * * * that his incapacity is permanent and was (not) contracted in line of duty."

Var. 4.—(To be used if the disability is the result of the officer's own misconduct) " * * * and that his incapacity is permanent and is not the result of an incident of the service, but is the result of his own misconduct."

Var. 5.—(To be used in the case of a minority report) "Notwithstanding the fact that Captain S——'s medical history states that his ailment, hemorrhagic retinitis, right eye, originated in the line of duty, and is the result of an incident of the service, we do not believe that any acts of duty performed by Captain S—— were capable of causing a hemorrhagic retinitis.

"We believe the condition of Captain S——'s right eye to be due to ——, and we are constrained to differ from the finding of the board as to the origin of the disability.

"We believe that Captain Q—— R. S——, U. S. Navy, is incapacitated for active service by reason of hemorrhagic retinitis (hemorrhage of the retina) of the right eye; that his incapacity is permanent, and is not the result of an incident of the service and is not the result of his own misconduct.

"R—— S. T——,
"Captain, Medical Corps, U. S. Navy, Member.

"L—— M. N——,
Recorder."

"U—— V. W——,
"Captain, U. S. Navy, Member."

DOCUMENTS. APPENDED

994. Letter to medical members of board directing physical examination.—

NAVAL RETIRING BOARD, NAVY DEPARTMENT,
WASHINGTON, D. C.,
March 25, 19—.

From: President, Naval Retiring Board.

To: Captains R—— S. T——, and G—— H. K——, Medical Corps, U. S. Navy.

Subject: Examination of Captain Q—— R. S——, U. S. Navy.

1. You will make a careful examination into the past and present physical and mental condition of Captain Q—— R. S——, U. S. Navy, whose case has been referred to this board for examination, and report as to his capacity to perform the duties appropriate to his commission, in conformity with the provisions of 34 U. S. Code 411 to 418.

2. Besides a personal examination you will examine closely all matter transmitted to the board in this case by the Bureau of Navigation from the files and records of the Navy Department, and you will also endeavor to obtain from any other authentic source within your reach such information as will aid the board in the performance of its duties. This information you will be prepared to impart to the board orally, in the form of an opinion. After having heard the evidence of the officer undergoing examination, in case he cares to introduce such evidence, you will then report in writing in the form of a sworn statement.

3. In case you find the officer under examination incapacitated for active service you will state whether, in your opinion, his disability is the result of an incident of the service, and in case you are of the opinion that it is not the result of an incident of the service you will state whether or not it is due to his own misconduct.

A—— B. C——.

995. Letter from medical members to president of board.—

NAVAL RETIRING BOARD, NAVY DEPARTMENT

WASHINGTON, D. C.,
 March 26, 19—.

From: Captains R—— S. T—— and G—— H. K——,
 Medical Corps, U. S. Navy.

To: President, Naval Retiring Board.

Subject: Examination of Captain Q—— R. S——, U. S. Navy.

1. We have carefully and separately examined Captain Q—— R. S——, U. S. Navy, as to his past and present mental and physical condition, together with the records pertaining to his case, and report as follows:

Captain S—— is 55 years old and has been 38 years in the naval service.

He has suffered from some of the common ailments, but they have no bearing on his present condition.

The medical history, verified in the office of the Surgeon General, has been fully considered.

We believe Captain S—— to be suffering from choroiditis (with a secondary retinitis).

We consider this condition to be permanent, by reason of which he is incapacitated for active service in the Navy, and that his incapacity is (not) the result of an incident of the service, and is (not) the result of his own misconduct (15).

R—— S. T——
 G—— H. K——

Sworn to and subscribed before me, this 26th of March, 19—.

A—— B. C——,
Rear Admiral, U. S. Navy, President of Board.

2

(15) *Variation 1.*—"We believe Captain S—— to be suffering from neurasthenia, which, by the records is shown to have originated in the line of duty.

"We consider this condition to be temporary and, therefore, he is not permanently incapacitated for active service in the Navy. We find that he is at present unfit for duty, and recommend that he be ordered to a naval hospital for further observation and treatment."

Var. 2.—(To be used in the case of an officer due for promotion or advancement by seniority or a line officer on a promotion list who has failed to qualify physically for promotion or advancement.) "We consider this condition to be permanent, by reason of which he is incapacitated for service in the Navy, and that his incapacity was (not) contracted in the line of duty."

996. Letter transmitting papers to board.—

File No. ———.

NAVY DEPARTMENT.

BUREAU OF NAVIGATION.

*Washington, D. C.**March 24, 19—.*

From: Bureau of Navigation.

To: President, Naval Retiring Board.

Navy Department, Washington, D. C.

Subject: Transmitting papers for consideration in connection with examination for retirement.

Inclosure: No. 44642.

1. Captain Q——— R. S———, U. S. Navy, having been ordered to report to you for examination in conformity with 34 U. S. Code 411 to 418, the bureau transmits herewith all matter found on the files and records of the department which relate in any way to his physical or mental condition, viz:

One record of service and one medical record.

Eight (8) reports on the fitness of officers.

Memorandum from the office of the Judge Advocate General, dated March 18, 19—, with the papers referred to therein.

By direction.

C

997. Medical history.—

(Here is appended the medical history of the officer under examination.)

998. Record of service.—

(Here are appended the papers transmitted with the foregoing communication. The record of service is of service since original entry into the Navy.)

999. Papers submitted by officer under examination.—

(Here are appended the affidavits, statement, and brief submitted by the officer under examination.)

(If there are any other documents they are appended in the order in which they occur in the proceedings. If there are any exhibits introduced they are appended following the documents and are marked "Exhibit 1", etc.)

APPENDIX A

CONSTITUTION OF THE UNITED STATES OF AMERICA (1)

WE THE PEOPLE of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this CONSTITUTION for the United States of America. (2)

ARTICLE I

Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2. [1] The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

(1) The original punctuation and capitalization have been reproduced.

Words and figures not in the original are inclosed in brackets [].

Passages that were temporary, or that have been superseded by amendments, are inclosed in braces { }.

(2) Historical notes from Senate Document No. 12, sixty-third Congress:

In May, 1785, a committee of Congress made a report in favor of altering the Articles of Confederation.

In January, 1786, the Legislature of Virginia passed a resolution providing for the appointment of five commissioners, who, or any three of them, should meet such commissioners as might be appointed in the other States of the Union, at a time and place to be agreed upon, to take into consideration the trade of the United States; to consider how far a uniform system in their commercial regulations may be necessary to their common interest and their permanent harmony; and to report to the several States such an act, relative to this great object, as when ratified by them, will enable the United States in Congress effectually to provide for the same. The Virginia commissioners, after some correspondence, fixed the first Monday in September as the time, and the city of Annapolis as the place for the meeting, but only four other States were represented, viz, Delaware, New York, New Jersey, and Pennsylvania. Commissioners appointed by Massachusetts, New Hampshire, North Carolina, and Rhode Island failed to attend. The commissioners present agreed upon a report (drawn by Mr. Hamilton of New York), expressing their unanimous conviction that it might especially tend to advance the interests of the Union if the States by which they were respectively delegated would concur, and use their endeavors to procure the concurrence of the other States, in the appointment of commissioners to meet at Philadelphia on the second Monday of May following, to take into consideration the situation of the United States; to devise such further provisions as should appear to them necessary to render the Constitution of the Federal Government adequate to the exigencies of the Union; and to report such an act for that purpose to the United States in Congress assembled as, when agreed to by them and afterwards confirmed by the legislatures of every State, would effectually provide for the same.

Congress, on February 21, 1787, adopted a resolution in favor of a convention, and the legislature of those States which had not already done so (with the exception of Rhode Island) promptly appointed delegates. On May 25, seven States having convened, George Washington of Virginia, was unanimously elected President, and the consideration of the proposed constitution was commenced.

[2] No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

[3] Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, {which shall be determined by adding to the whole Number of free Persons}, including those bound to Service for a Term of Years, and excluding Indians not taxed, {three fifths of all other Persons}. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; {and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three}.

[4] When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

[5] The House of Representatives shall chuse their Speaker and Other officers; and shall have the sole Power of Impeachment.

Section 3. [1] {The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one vote.}

[2] {Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second year, of the second Class at the Expiration of the Fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.}

[3] No person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

[4] The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

[5] The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

[6] The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

[7] Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor. Trust or Profit under the United States: but the Party convicted shall never-

theless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Section 4. [1] The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

[2] {The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.}

Section 5. [1] Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

[2] Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

[3] Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those present, be entered on the Journal.

[4] Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Section 6. [1] The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

[2] No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

Section 7. [1] All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

[2] Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after

it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

[3] Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Section 8. The Congress shall have Power [1] To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

[2] To borrow Money on the credit of the United States;

[3] To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

[4] To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

[5] To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

[6] To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

[7] To establish Post Offices and post Roads;

[8] To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

[9] To constitute Tribunals inferior to the supreme Court;

[10] To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

[11] To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

[12] To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

[13] To provide and maintain a Navy;

[14] To make Rules for the Government and Regulation of the land and naval Forces;

[15] To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

[16] To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

[17] To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

[18] To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Section 9. [1] { The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person. }

[2] The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

[3] No Bill of Attainder or ex post facto Law shall be passed.

[4] No Capitation, or other direct, tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

[5] No Tax or Duty shall be laid on Articles exported from any State.

[6] No preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

[7] No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

[8] No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

Section 10. [1] No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

[2] No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

[3] No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

ARTICLE II

Section 1. [1] The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

[2] Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator

or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

{The Electors shall meet in their respective States, and vote by ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each: which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such a Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two-thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice-President.}

[3] The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

[4] No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

[5] In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation, or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

[6] The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

[7] Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

Section 2. [1] The President shall be the Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments,

upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.

[2] He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law; but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

[3] The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Section 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

Section 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

ARTICLE III

Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section 2. [1] The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

[2] In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

[3] The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall

have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Section 3. [1] Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

[2] The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

ARTICLE IV

Section 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Section 2. [1] The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

[2] A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up to be removed to the State having Jurisdiction of the Crime.

[3] {No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due. }

Section 3. [1] New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

[2] The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States or of any particular State.

Section 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

ARTICLE V

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and} that no State without its Consent, shall be deprived of its equal Suffrage in the Senate.

ARTICLE VI

[1] All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

[2] This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

[3] The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

ARTICLE VII

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

(3).

Articles in addition to and Amendment of the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the fifth Article of the original Constitution.

(ARTICLE I) (4)

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

(ARTICLE II)

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

(ARTICLE III)

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

(3) The president of the convention transmitted the Constitution to Congress, with resolutions stating how the proposed Federal Government should be put in operation, and an explanatory letter. Congress, on September 28, 1787, directed the Constitution, with accompanying documents, to "be transmitted to the several legislatures in order to be submitted to a convention of delegates chosen in each State by the people thereof, in conformity with the resolves of the convention."

On March 4, 1789, the day fixed by Congress on September 13, 1788, for beginning the operations of the Government under the Constitution, it had been ratified by the conventions of 11 States. It was eventually ratified by each of the 13 original States.

(4) The first ten amendments to the Constitution of the United States were proposed to the legislatures of the several States by the First Congress, on the 25th of September, 1789. They were ratified by the following States, and the notifications of ratification by the governors thereof were successively communicated by the President to Congress: N. J., Nov. 20, 1789; Md., Dec. 19, 1789; N. C., Dec. 22, 1789; S. C., Jan. 19, 1790;

(ARTICLE IV)

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

(ARTICLE V)

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

(ARTICLE VI)

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence.

(ARTICLE VII)

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

(ARTICLE VIII)

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

(ARTICLE IX)

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

(ARTICLE X)

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

N. H., Jan. 25, 1790; Del., Jan. 28, 1790; Pa., Mar. 10, 1790; N. Y., Mar. 27, 1790; R. I., June 15, 1790; Vt., Nov. 3, 1791, and Va., Dec. 15, 1791. There is no evidence that Georgia, Massachusetts, and Connecticut ratified.

(ARTICLE XI) (5)

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

(ARTICLE XII) (6)

The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

(ARTICLE XIII) (7)

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

(5) The eleventh amendment was declared in a message from the President to Congress, dated the 8th of January, 1798, to have been ratified by the legislatures of three-fourths of the States.

(6) The twelfth amendment was ratified by the legislatures of three-fourths of the States in 1804, according to a proclamation of the Secretary of State dated the 25th of September, 1804.

(7) The thirteenth amendment was declared in a proclamation of the Secretary of State, dated the 18th of December, 1865, to have been ratified by the legislatures of 27 of the 36 States.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

(ARTICLE XIV) (8)

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States: nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

(ARTICLE XV) (9)

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

(8) The fourteenth amendment was declared adopted by a concurrent resolution of Congress of the 21st of July, 1868. The Secretary of State's proclamation was dated the 28th of July, 1868.

(9) The fifteenth amendment was declared in a proclamation of the Secretary of State, dated the 30th of March, 1870, to have been ratified by the legislatures of 29 of the 37 States.

CONSTITUTION OF THE UNITED STATES OF AMERICA AMDTS.

(ARTICLE XVI) (10)

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

(ARTICLE XVII) (11)

[1] The Senate of the United States shall be composed of two Senators from each state, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislatures.

[2] When vacancies happen in the representation of any state in the Senate, the executive authority of such state shall issue writs of election to fill such vacancies: Provided, that the legislature of any state may empower the executive thereof to make temporary appointment until the people fill the vacancies by election as the legislature may direct.

[3] This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

(ARTICLE XVIII) (12)

Section 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

Sec. 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

Sec. 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

(ARTICLE XIX) (13)

[1] The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

[2] Congress shall have power to enforce this article by appropriate legislation.

(ARTICLE XX) (14)

Section 1. The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives

(13) The sixteenth amendment was declared in a proclamation of the Secretary of State, dated the 25th of February, 1913, to have been ratified by three-fourths of the States.

(11) The seventeenth amendment was declared in a proclamation of the Secretary of State, dated the 31st of May, 1913, to have been ratified by the legislatures of three-fourths of the States.

(12) The eighteenth amendment was declared in a proclamation of the Secretary of State, dated the 29th day of January, 1919, to have been ratified by the legislatures of three-fourths of the States.

(13) The nineteenth amendment was declared in a proclamation of the Secretary of State, dated the 26th day of August, 1920, to have been ratified by the legislatures of three-fourths of the States.

(14) The twentieth amendment was declared in a proclamation of the Secretary of State, dated the 6th of February, 1933, to have been ratified by the legislatures of 39 of the 48 States.

at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

Sec. 2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

Sec. 3. If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

Sec. 4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

Sec. 5. Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

Sec. 6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.

(ARTICLE XXI) (15)

Section 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

Sec. 2. The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

Sec. 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

(15) The twenty-first amendment was declared in a proclamation of the Acting Secretary of State, dated the 5th of December, 1933, to have been ratified by conventions of 36 of the 48 States.

APPENDIX B

ARTICLES FOR THE GOVERNMENT OF THE NAVY

B-1. The articles for the government of the Navy.—The laws governing the administration of justice in the Navy are codified in section 1200, title 34, of the United States Code under the title of "Articles for the government of the Navy."

B-2. Same: Codification.—On June 30, 1926, Congress enacted the Code of Laws of the United States of America, referred to as the U. S. Code and cited as "U. S. C." The present code is the 1934 edition of the United States Code and is the official restatement in convenient form of the general and permanent laws of the United States in force January 3, 1935. It is composed of 50 titles. Title 34 contains the laws relating to the Navy and section 1200 of that title contains the articles for the government of the Navy. In enacting the U. S. Code, Congress did not enact any new laws, nor was any law repealed. To provide for any errors that might be made, the enacting clause contains the following:

The matter set forth in the code * * * shall establish prima facie the laws of the United States, general and permanent in their nature, in force * * *; but nothing in this act shall be construed as repealing or amending any such law, or as enacting as new law any matter contained in the code. In case of any inconsistency arising through omission or otherwise between the provisions of any section of this code and the corresponding portion of legislation heretofore enacted effect shall be given for all purposes whatsoever to such enactments.

Congress has further provided for the preparation and publication of cumulative supplements to the code or new editions thereof for the purpose of keeping the code up to date and of correcting errors discovered in previous editions or supplements.

Since, in case of inconsistency between the former enactments and the code, the former enactments prevail, they are cited at the end of each article in the code in parentheses for ready reference. The code is presumed to be the law. The presumption is rebuttable by production of prior unrepealed acts of Congress at variance with the code.

This appendix contains the articles for the government of the Navy as published in U. S. Code and supplements.

Articles established.—The Navy of the United States shall be governed by the following articles (R. S., sec. 1624):

CONDUCT AND MORALS IN GENERAL

B-3. Article 1. Commanders' duties of example and correction.—The commanders of all fleets, squadrons, naval stations, and vessels belonging to the Navy, are required to show in themselves a good example of virtue, honor, patriotism, and subordination; to be vigilant in inspecting the conduct of all persons who are placed under their command; to guard against and suppress all dissolute

and immoral practices, and to correct, according to the laws and regulations of the Navy, all persons who are guilty of them; and any such commander who offends against this article shall be punished as a court-martial may direct. (R. S., sec. 1624, art. 1.)

B-4. Article 2, Divine service.—The commanders of vessels and naval stations to which chaplains are attached shall cause divine service to be performed on Sunday, whenever the weather and other circumstances allow it to be done; and it is earnestly recommended to all officers, seamen, and others in the naval service diligently to attend at every performance of the worship of Almighty God. (R. S., sec. 1624, art 2.)

B-5. Article 3. Irreverent behavior.—Any irreverent or unbecoming behavior during divine service shall be punished as a court-martial may direct (R. S., sec. 1624, art. 3; Feb. 16, 1909, c. 131, secs. 1, 2, 35 Stat. 621.)

OFFENSES PUNISHABLE BY DEATH

B-6. Article 4. Persons to whom applicable.—The punishment of death, or such other punishment as a court-martial may adjudge, may be inflicted on any person in the naval service—

First (Mutiny).—Who makes, or attempts to make, or unites with any mutiny or mutinous assembly, or, being witness to or present at any mutiny, does not do his utmost to suppress it; or knowing of any mutinous assembly or of any intended mutiny, does not immediately communicate his knowledge to his superior or commanding officer;

Second (Disobedience of orders).—Or disobeys the lawful orders of his superior officer;

Third (Striking superior officer).—Or strikes or assaults, or attempts or threatens to strike or assault, his superior officer while in the execution of the duties of his office;

Fourth (Intercourse with an enemy).—Or gives any intelligence to, or holds or entertains any intercourse with, an enemy or rebel, without leave from the President, the Secretary of the Navy, the commander in chief of the fleet, the commander of the squadron, or, in case of a vessel acting singly, from his commanding officer;

Fifth (Messages from an enemy).—Or receives any message or letter from an enemy or rebel, or, being aware of the unlawful reception of such message or letter, fails to take the earliest opportunity to inform his superior or commanding officer thereof;

Sixth (Desertion in time of war).—Or, in time of war, deserts or entices others to desert;

Seventh (Deserting trust).—Or, in time of war, deserts or betrays his trust, or entices or aids others to desert or betray their trust;

Eighth (Sleeping on watch).—Or sleeps upon his watch;

Ninth (Leaving station).—Or leaves his station before being regularly relieved;

Tenth (Willful stranding or injury of vessels).—Or intentionally or willfully suffers any vessel of the Navy to be stranded, or run upon rocks or shoals, or improperly hazarded; or maliciously or willfully injures any vessel of the Navy, or any part of her tackle, armament, or equipment, whereby the safety of the vessel is hazarded or the lives of the crew exposed to danger;

Eleventh (Unlawful destruction of public property).—Or unlawfully sets on fire, or otherwise unlawfully destroys, any public property not at the time in possession of an enemy, pirate, or rebel;

Twelfth. (Striking flag or treacherously yielding).—Or strikes or attempts to strike the flag to an enemy or rebel, without proper authority, or, when engaged in battle, treacherously yields or pusillanimously cries for quarter;

Thirteenth (Cowardice in battle).—Or, in time of battle, displays cowardice, negligence, or disaffection, or withdraws from or keeps out of danger to which he should expose himself;

Fourteenth (Deserting duty in battle).—Or, in time of battle, deserts his duty or station, or entices others to do so;

Fifteenth (Neglecting orders to prepare for battle).—Or does not properly observe the orders of his commanding officer, and use his utmost exertions to carry them into execution, when ordered to prepare for or join in, or when actually engaged in, battle, or while in sight of an enemy;

Sixteenth (Neglecting to clear for action).—Or, being in command of a fleet, squadron, or vessel acting singly, neglects, when an engagement is probable, or when an armed vessel of an enemy or rebel is in sight, to prepare and clear his ship or ships for action;

Seventeenth (Neglecting to join on signal for battle).—Or does not, upon signal for battle, use his utmost exertions to join in battle;

Eighteenth (Failing to encourage men to fight).—Or fails to encourage, in his own person, his inferior officers and men to fight courageously;

Nineteenth (Failing to seek encounter).—Or does not do his utmost to overtake and capture or destroy any vessel which it is his duty to encounter;

Twentieth (Failing to afford relief in battle).—Or does not afford all practicable relief and assistance to vessels belonging to the United States or their allies, when engaged in battle (R. S., sec. 1624. art. 4).

B-7. Article 5. Spies.—All persons who, in time of war, or of rebellion against the supreme authority of the United States, come or are found in the capacity of spies, or who bring or deliver any seducing letter or message from an enemy or rebel, or endeavor to corrupt any person in the Navy to betray his trust, shall suffer death, or such other punishment as a court martial may adjudge (R. S., sec. 1624, art. 5).

B-8. Article 6. Murder.—If any person belonging to any public vessel of the United States commits the crime of murder without the territorial jurisdiction thereof, he may be tried by court martial and punished with death (R. S., sec. 1624, art. 6).

B-9. Article 7. Imprisonment in lieu of death.—A naval court martial may adjudge the punishment of imprisonment for life, or for a stated term, at hard labor, in any case where it is authorized to adjudge the punishment of death; and such sentences of imprisonment and hard labor may be carried into execution in any prison or penitentiary under the control of the United States, or which the United States may be allowed, by the legislature of any State, to use; and persons so imprisoned in the prison or penitentiary of any State or Territory shall be subject, in all respects, to the same discipline and treatment as convicts sentenced by the courts of the State or Territory in which the same may be situated (R. S., sec. 1624, art. 7).

OFFENSES PUNISHABLE AT DISCRETION OF COURT MARTIAL

B-10. Article 8. Persons to whom applicable.—Such punishment as a court martial may adjudge may be inflicted on any person in the Navy—

First (Scandalous conduct).—Who is guilty of profane swearing, falsehood, drunkenness, gambling, fraud, theft, or any other scandalous conduct tending to the destruction of good morals;

Second (Cruelty).—Or is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his orders;

Third (Quarreling).—Or quarrels with, strikes, or assaults, or uses provoking or reproachful words, gestures, or menaces toward, any person in the Navy;

Fourth (Fomenting quarrels).—Or endeavors to foment quarrels between other persons in the Navy;

Fifth (Duels).—Or sends or accepts a challenge to fight a duel or acts as a second in a duel;

Sixth (Contempt of superior officer).—Or treats his superior officer with contempt, or is disrespectful to him in language or deportment, while in the execution of his office;

Seventh (Combinations against commanding officer).—Or joins in or abets any combination to weaken the lawful authority of, or lessen the respect due to, his commanding officer;

Eighth (Mutinous words).—Or utters any seditious or mutinous words;

Ninth (Neglect of orders).—Or is negligent or careless in obeying orders, or culpably inefficient in the performance of duty;

Tenth (Preventing destruction of public property).—Or does not use his best exertions to prevent the unlawful destruction of public property by others;

Eleventh (Negligent stranding).—Or, through inattention or negligence, suffers any vessel of the Navy to be stranded, or run upon a rock or shoal, or hazarded;

Twelfth (Negligence in convoy service).—Or, when attached to any vessel appointed as convoy to any merchant or other vessels, fails diligently to perform his duty, or demands or exacts any compensation for his services, or maltreats the officers or crews of such merchant or other vessels;

Thirteenth (Receiving articles for freight).—Or takes, receives, or permits to be received, on board the vessel to which he is attached, any goods or merchandise, for freight, sale, or traffic, except gold, silver, or jewels, for freight or safe-keeping; or demands or receives any compensation for the receipt or transportation of any other article than gold, silver, or jewels without authority from the President or Secretary of the Navy;

Fourteenth (False muster).—Or knowingly makes or signs, or aids, abets, directs, or procures the making or signing of, any false muster;

Fifteenth (Waste of public property).—Or wastes any ammunition, provisions, or other public property, or having power to prevent it, knowingly permits such waste;

Sixteenth (Plundering on shore).—Or, when on shore, plunders, abuses, or maltreats any inhabitant, or injures his property in any way;

Seventeenth (Refusing to apprehend offenders).—Or refuses, or fails to use, his utmost exertions to detect, apprehend, and bring to punishment all offenders, or to aid all persons appointed for that purpose;

Eighteenth (Refusing to receive prisoners).—Or, when rated or acting as master-at-arms, refuses to receive such prisoners as may be committed to his charge, or, having received them, suffers them to escape, or dismisses them without orders from the proper authority;

Nineteenth (Absence from duty without leave).—Or is absent from his station or duty without leave, or after his leave has expired;

Twentieth (Violating general orders or regulations).—Or violates or refuses obedience to any lawful general order or regulation issued by the Secretary of the Navy;

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Twenty-first (Desertion in time of peace).—Or, in time of peace, deserts or attempts to desert, or aids and entices others to desert;

Twenty-second (Harboring deserters).—Or receives or entertains any deserter from any other vessel of the Navy, knowing him to be such, and does not, with all convenient speed, give notice of such deserter to the commander of the vessel to which he belongs, or to the commander in chief, or to the commander of the squadron (R. S., sec. 1624, art. 8).

SPECIAL PROVISIONS APPLICABLE TO OFFICERS

B-11. Article 9. Officer absent without leave reduced.—Any officer who absents himself from his command without leave, may, by the sentence of a court martial, be reduced to the rating of seaman, second class (R. S., sec. 1624, art. 9, Aug. 29, 1916, c. 417, 39 Stat. 575).

B-12. Article 10. Desertion by resignation.—Any commissioned officer of the Navy or Marine Corps, who, having tendered his resignation, quits his post or proper duties without leave, and with intent to remain permanently absent therefrom, prior to due notice of the acceptance of such resignation, shall be deemed and punished as a deserter (R. S., sec. 1624, art. 10).

RESTRICTIONS ON PRIVATE PROPERTY

B-13. Article 11. Dealing in supplies.—No person in the naval service shall procure stores or other articles or supplies for, and dispose thereof to, the officers or enlisted men on vessels of the Navy, or at navy yards or naval stations, for his own account or benefit (R. S., sec. 1624, art. 11).

B-14. Article 12. Importing dutiable goods in public vessels.—No person connected with the Navy shall, under any pretense, import in a public vessel any article which is liable to the payment of duty (R. S., sec. 1624, art. 12).

B-15. Article 13. Distilled spirits only as medical stores.—Distilled spirits shall be admitted on board of vessels of war only upon the order and under the control of the medical officers of such vessels, and to be used only for medical purposes (R. S., sec. 1624, art. 13).

OFFENSES PUNISHABLE BY FINE AND IMPRISONMENT

B-16. Article 14. Persons to whom applicable.—Fine and imprisonment or such other punishment as a court martial may adjudge, shall be inflicted upon any person in the naval service of the United States—

First (Presenting false claims).—Who presents or causes to be presented to any person in the civil, military, or naval service thereof, for approval or payment, any claim against the United States or any officer thereof, knowing such claim to be false or fraudulent; or

Second (Agreement to obtain payment of false claims).—Who enters into any agreement or conspiracy to defraud the United States by obtaining, or aiding others to obtain, the allowance or payment of any false or fraudulent claim; or

Third (False paper).—Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or against any officer thereof, makes or uses, or procures or advises the making or use of, any writing, or other paper, knowing the same to contain any false or fraudulent statement; or

Fourth (Perjury).—Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United

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States or any officer thereof, makes, or procures or advises the making of, any oath to any fact or to any writing or other paper, knowing such oath to be false; or

Fifth (Forgery).—Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or any officer thereof, forges or counterfeits, or procures or advises the forging or counterfeiting of, any signature upon any writing or other paper, or uses, or procures or advises the use of, any such signature, knowing the same to be forged or counterfeited; or

Sixth (Delivering less property than receipt calls for).—Who, having charge, possession, custody, or control of any money or other property of the United States, furnished or intended for the naval service thereof, knowingly delivers, or causes to be delivered, to any person having authority to receive the same, any amount thereof less than that for which he receives a certificate or receipt; or

Seventh (Giving receipt without knowing truth of).—Who, being authorized to make or deliver any paper certifying the receipt of any money or other property of the United States, furnished or intended for the naval service thereof, makes, or delivers to any person, such writing, without having full knowledge of the truth of the statements therein contained, and with intent to defraud the United States; or

Eighth (Stealing, wrongfully selling, etc.).—Who steals, embezzles, knowingly and willfully misappropriates, applies to his own use or benefit, or wrongfully, and knowingly sells or disposes of any ordnance, arms, equipments, ammunition, clothing, subsistence stores, money or other property of the United States, furnished or intended for the military or naval service thereof; or

Ninth (Buying public military property).—Who knowingly purchases, or receives in pledge for any obligation or indebtedness, from any other person who is a part of or employed in said service, any ordnance, arms, equipments, ammunition, clothing, subsistence stores, or other property of the United States, such other person not having lawful right to sell or pledge the same; or

Tenth (Any other fraud against United States).—Who executes, attempts, or countenances any other fraud against the United States (1).

Eleventh (Trial of offender after discharge).—And if any person, being guilty of any of the offenses described in this article while in the naval service, receives his discharge, or is dismissed from the service, he shall continue to be liable to be arrested and held for trial and sentenced by a court martial, in the same manner and to the same extent as if he had not received such discharge nor been dismissed (R. S., sec. 1624, art 14).

PROVISIONS APPLICABLE TO PRIZE

B-17. Article 15. Prize money.—The proceeds of vessels or any property hereafter captured, condemned as prize, shall not be distributed among the captors, in whole or in part, nor shall any bounty be paid for the sinking or destruction of vessels of the enemy hereafter occurring in time of war (R. S., sec. 1624, art. 15; March 3, 1899, c. 413, sec. 13, 30 Stat. 1007).

B-18. Article 16. Removing property from a prize.—No person in the Navy shall take out of a prize, or vessel seized as a prize, any money, plate, goods,

(1) The word "other" restricts the application of par. 10, art. 14, A. G. N., to "other like frauds", that is to say, to others like those enumerated in the preceding paragraphs of the article. (C. M. O. 190, 1918, 24.)

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or any part of her equipment, unless it be for the better preservation thereof, or unless such articles are absolutely needed for the use of any of the vessels or armed forces of the United States, before the same are adjudged lawful prize by a competent court; but the whole, without fraud, concealment, or embezzlement, shall be brought in, in order that judgment may be passed thereon; and every person who offends against this article shall be punished as a court martial may direct (R. S. sec. 1624, art 16).

B-19. Article 17. Maltreating persons on board prize.—If any person in the Navy strips off the clothes of, or pillages, or in any manner maltreats, any person taken on board a prize, he shall suffer such punishment as a court martial may adjudge (R. S., sec. 1624, art 17).

SPECIAL PROVISIONS APPLICABLE TO DESERTERS AND RECRUITING

B-20. Article 18. Forfeiture of citizenship rights for desertion.—Every person who in time of war deserts the naval service of the United States shall be deemed to have voluntarily relinquished and forfeited his rights of citizenship, as well as his right to become a citizen, and shall be forever incapable of holding any office of trust or profit under the United States, or of exercising any rights of citizens thereof (R. S., secs. 1996, 1998; Aug. 22, 1912, c. 336, sec. 1, 37 Stat. 356).

B-21. Article 19. Enlisting deserters, minors, etc.—Any officer who knowingly enlists into the naval service any person who has deserted in time of war from the naval or military service of the United States, or any insane or intoxicated person, or any minor between the ages of fourteen and eighteen years, without the consent of his parents or guardian, or any minor under the age of fourteen years, shall be punished as a court martial may direct (R. S., sec. 1624, art. 19; May 12, 1879, c. 5, 21 Stat. 3; Aug. 22, 1912, c. 336, sec. 2, 37 Stat. 356).

DUTIES OF COMMANDING OFFICERS

B-22. Article 20. Rules to be obeyed by.—Every commanding officer of a vessel in the Navy shall obey the following rules:

First (Men received on board).—Whenever a man enters on board, the commanding officer shall cause an accurate entry to be made in the ship's books, showing his name, the date, place, and term of his enlistment, the place or vessel from which he was received on board, his rating, his descriptive list, his age, place of birth, and citizenship, with such remarks as may be necessary.

Second (List of officers, men, and passengers).—He shall, before sailing, transmit to the Secretary of the Navy a complete list of the rated men under his command, showing the particulars set forth in rule 1, and a list of officers and passengers, showing the date of their entering. And he shall cause similar lists to be made out on the 1st day of every third month and transmitted to the Secretary of the Navy as opportunities occur, accounting therein for any casualty which may have happened since the last list.

Third (Deaths and desertion).—He shall cause to be accurately minuted on the ship's books the names of any persons dying or deserting, and the times at which such death or desertion occurs.

Fourth (Property of deceased persons).—In case of the death of any officer, man, or passenger on said vessel, he shall take care that the paymaster secures all the property of the deceased, for the benefit of his legal representatives.

Fifth (Accounts of men received).—He shall not receive on board any man transferred from any other vessel or station to him, unless such man is fur-

nished with an account, signed by the captain and paymaster of the vessel or station from which he came, specifying the date of his entry on said vessel or at said station, the period and term of his service, the sums paid him, the balance due him, the quality in which he was rated, and his descriptive list.

Sixth (Accounts of men sent from the ship).—He shall, whenever officers or men are sent from his ship, for whatever cause, take care that each man is furnished with a complete statement of his account, specifying the date of his enlistment, the period and term of his service, and his descriptive list. Said account shall be signed by the commanding officer and paymaster.

Seventh (Inspection of provisions).—He shall cause frequent inspections to be made into the condition of the provisions on his ship, and use every precaution for their preservation.

Eighth (Health of crew).—He shall frequently consult with the surgeon in regard to the sanitary condition of his crew, and shall use all proper means to preserve their health. And he shall cause a convenient place to be set apart for sick or disabled men, to which he shall have them removed, with their hammocks and bedding, when the surgeon so advises, and shall direct that some of the crew attend them and keep the place clean.

Ninth (Attendance at final payment of crew).—He shall attend in person, or appoint a proper officer to attend, when his crew is finally paid off, to see that justice is done to the men and to the United States in the settlement of the accounts.

Tenth (Articles for the government of the Navy).—He shall cause the articles for the government of the Navy to be hung up in some public part of the ship and read once a month to his ship's company.

Eleventh (Punishment for offending against this article).—Every commanding officer who offends against the provisions of this article shall be punished as a court martial may direct (R. S. sec. 1624, art. 20).

B-23. Article 21. Authority of officers after loss of vessel.—When the crew of any vessel of the United States are separated from their vessel by means of her wreck, loss, or destruction, all the command and authority given to the officers of such vessel shall remain in full force until such ship's company shall be regularly discharged from or ordered again into service, or until a court martial or court of inquiry shall be held to inquire into the loss of said vessel. And if any officer or man, after such wreck, loss, or destruction, acts contrary to the discipline of the Navy, he shall be punished as a court martial may direct (R. S., sec. 1624, art. 21).

PUNISHMENT OF OFFENSES NOT SPECIFIED

B-24. Article 22. (a) Offenses not specified.—All offenses committed by persons belonging to the Navy which are not specified in the foregoing articles shall be punished as a court martial may direct (R. S., sec. 1624, art. 22).

(b) Fraudulent enlistment.—Fraudulent enlistment, and the receipt of any pay or allowance thereunder, is hereby declared an offense against naval discipline and made punishable by general court martial, under this article (R. S., sec. 1624, art. 22).

B-25. Article 23. Offenses committed on shore.—All offenses committed by persons belonging to the Navy while on shore shall be punished in the same manner as if they had been committed at sea (R. S., sec. 1624, art. 23).

B-26. Article 24. Punishments by order of commander.—No commander of a vessel shall inflict upon a commissioned or warrant officer any other punishment than private reprimand, suspension from duty, arrest, or confinement, and such suspension, arrest, or confinement shall not continue longer than ten days unless a further period is necessary to bring the offender to trial by a court martial; nor shall he inflict, or cause to be inflicted, upon any petty officer, or person of inferior rating, or marine, for a single offense, or at any one time, any other than one of the following punishments, namely:

First. Reduction of any rating established by himself.

Second. Confinement not exceeding ten days, unless further confinement be necessary, in the case of a prisoner to be tried by court martial.

Third. Solitary confinement, on bread and water, not exceeding five days.

Fourth. Solitary confinement not exceeding seven days.

Fifth. Deprivation of liberty on shore.

Sixth. Extra duties.

No other punishment shall be permitted on board of vessels belonging to the Navy, except by sentence of a court martial. All punishments inflicted by the commander, or by his order, except reprimands, shall be fully entered upon the ship's log (R. S., sec. 1624, art. 24; Feb. 16, 1909, c. 131, secs. 1, 8, 35 Stat. 621).

B-27. Article 25. Punishments by other officers.—(a) All officers of the Navy and Marine Corps who are authorized to order either general or summary courts martial shall have the same authority to inflict minor punishments as is conferred by law upon the commander of a naval vessel.

(b) No officer who may command by accident, or in the absence of the commanding officer, except when such commanding officer is absent for a time by leave, shall inflict any other punishment than confinement (R. S., sec. 1624, art. 25; Aug. 29, 1916, c. 417, 39 Stat. 586).

SUMMARY COURTS MARTIAL

B-28. Article 26. Convening authority.—Summary courts martial may be ordered upon petty officers and enlisted men in the naval service under his command by the commanding officer of any vessel, the commandant of any navy yard or naval station, the commanding officer of any brigade, regiment, or separate or detached battalion, or other separate or detached command, or marine barracks, and, when empowered by the Secretary of the Navy, by the commanding officer or officer in charge of any command not specifically mentioned in the foregoing, for the trial of offenses which such commanding officer or commandant may deem deserving of greater punishment than he is authorized to inflict, but not sufficient to require trial by a general court martial (R. S., sec. 1624, art. 26; Aug. 29, 1916, c. 417, 39 Stat. 586).

B-29. Article 27. Constitution of summary courts martial.—A summary court martial shall consist of three officers not below the rank of ensign, as members, and of a recorder. The commander of a ship may order any officer under his command to act as such recorder (R. S., sec. 1624, art. 27).

B-30. Article 28. Oath of members and recorder.—Before proceeding to trial the members of a summary court martial shall take the following oath or affirmation, which shall be administered by the recorder: "I, A B, do swear (or affirm) that I will well and truly try, without prejudice or partiality, the case now depending, according to the evidence which shall be adduced, the laws for the government of the Navy, and my own conscience." After which the recorder of the court shall take the following oath or affirmation, which shall

be administered by the senior member of the court: "I, A B, do swear (or affirm) that I will keep a true record of the evidence which shall be given before this court and of the proceedings thereof" (R. S., sec. 1624, art. 28).

B-31. Article 29. Testimony.—Except as provided in articles 60 and 68, all testimony before a summary court martial shall be given orally, upon oath or affirmation, administered by the senior member of the court (2) (R. S., sec. 1624, art. 29).

B-32. Article 30. Punishments by summary courts martial.—Summary courts martial may sentence petty officers and persons of inferior ratings to either a part or the whole, as may be appropriate, of any one of the following punishments, namely:

First. Discharge from the service with bad conduct discharge; but the sentence shall not be carried into effect in a foreign country.

Second. Solitary confinement, not exceeding thirty days, on bread and water, or on diminished rations.

Third. Solitary confinement not exceeding thirty days.

Fourth. Confinement not exceeding two months.

Fifth. Reduction to next inferior rating.

Sixth. Deprivation of liberty on shore on foreign station.

Seventh. Extra police duties, and loss of pay, not to exceed three months, may be added to any of the above-mentioned punishments (R. S., sec. 1624, art. 30; Feb. 16, 1909, c. 131, sec. 8, 35 Stat. 621).

B-33. Article 31. Disrating for incompetency.—A summary court martial may disrate any rated person for incompetency (R. S., sec. 1624, art. 31).

B-34. Article 32. Execution of sentence of summary court.—No sentence of a summary court martial shall be carried into execution until the proceedings and sentence have been approved by the officer ordering the court, or his successor in office, and by his immediate superior in command: *Provided*, That if the officer ordering the court, or his successor in office, be the senior officer present, such sentence may be carried into execution upon his approval thereof, subject to the provisions of article 54 (b) (R. S. sec. 1624, art. 32; Feb. 16, 1909, c. 131, sec. 17, 35 Stat. 623; Aug. 29, 1916, c. 417, 39 Stat. 586).

B-35. Article 33. Remission of sentence.—The officer ordering a summary court martial shall have power to remit, in part or altogether, but not to commute, the sentence of the court. And it shall be his duty either to remit any part or the whole of any sentence, the execution of which would, in the opinion of the surgeon or senior medical officer on board, given in writing, produce serious injury to the health of the person sentenced, or to submit the case again, without delay, to the same or to another summary court martial, which shall have power, upon the testimony already taken, to remit the former punishment and to assign some other of the authorized punishments in the place thereof (R. S., sec. 1624, art. 33).

(2) **Art. 29 construed.**—In art. 29 of the articles for the government of the Navy the word "testimony" must be considered as used in an accurate legal sense, as meaning "that which comes to the tribunal through living witnesses speaking under oath" (22 C. J. 67); and in enacting this law Congress must be presumed to have understood the legal distinction between the terms "testimony" and the generic term "evidence." The phraseology of art. 29 does not forbid expressly or impliedly the production of other evidence than oral testimony; it merely provides that all testimony shall be given orally, upon oath or affirmation, except as provided in arts. 60 and 68. Art. 29 does not forbid the introduction of other forms of legal evidence such as documentary and real evidence.

B-36. Article 34. Proceedings and record of summary court.—The proceedings of summary courts martial shall be conducted with as much conciseness and precision as may be consistent with the ends of justice, and under such forms and rules as may be prescribed by the Secretary of the Navy, with the approval of the President, and all such proceedings shall be transmitted in the usual mode to the Navy Department, where they shall be kept on file for a period of two years from date of trial, after which time they may be destroyed in the discretion of the Secretary of the Navy (Feb. 16, 1909, c. 131, sec. 14, 35 Stat. 622).

GENERAL COURTS MARTIAL

B-37. Article 35. Authority to inflict summary court-martial punishments.—Any punishment which a summary court martial is authorized to inflict may be inflicted by a general court martial (R. S., sec. 1624, art. 35).

B-38. Article 36. Dismissal of officers.—No officer shall be dismissed from the naval service except by the order of the President or by sentence of a general court martial; and in time of peace no officer shall be dismissed except in pursuance of the sentence of a general court martial or in mitigation thereof: *Provided*, That the President is authorized to drop from the rolls of the Navy or Marine Corps any officer thereof who is absent from duty without leave for a period of three months or more, or who, having been found guilty by the civil authorities of any offense, is finally sentenced to confinement in a State or Federal penitentiary: *Provided further*, That no officer so dropped shall be eligible for reappointment (R. S., secs. 1229, 1624, art. 36; Apr. 2, 1918, c. 39, 40 Stat. 501).

B-39. Article 37. Officer dismissed by President may demand trial.—When any officer, dismissed by order of the President, makes, in writing, an application for trial, setting forth, under oath that he has been wrongfully dismissed, the President shall, as soon as the necessities of the service may permit, convene a court martial to try such officer on the charges on which he shall have been dismissed. And if such court martial shall not be convened within six months from the presentation of such application for trial, or if such court, being convened, shall not award dismissal or death as the punishment of such officer, the order of dismissal by the President shall be void: *Provided*, That the accounting officers are prohibited from making any allowance to any officer of the Navy who has been, or may hereafter be, dismissed from the service and restored to the same under the provisions of this article, to exceed more than pay as on leave for six months from the date of dismissal, unless it shall appear that the officer demanded in writing, addressed to the Secretary of the Navy, and continued to demand as often as once in six months, a trial as provided for in this article (R. S., sec. 1624, art. 37; June 22, 1874, c. 392, sec. 2, 18 Stat. 192).

B-40. Article 38. Convening authority.—General courts martial may be convened:

First. By the President, the Secretary of the Navy, the commander in chief of a fleet or squadron, and the commanding officer of a naval station beyond the continental limits of the United States; and

Second. When empowered by the Secretary of the Navy, by the commanding officer of a squadron, division, flotilla, or larger naval force afloat, and of a brigade or larger force of the naval service on shore beyond the continental limits of the United States; and

Third. In time of war, if then so empowered by the Secretary of the Navy, by the commandant of any navy yard or naval station, and by the commanding officer of a brigade or larger force of the Navy or Marine Corps on shore not attached to a navy yard or naval station (R. S., sec. 1624, art. 38; Feb. 16, 1909, c. 131, sec. 10, 35 Stat. 621; Aug. 29, 1916, c. 417, 39 Stat. 586).

B-41. Article 39. Constitution of general court martial.—A general court martial shall consist of not more than thirteen nor less than five commissioned officers as members; and as many officers, not exceeding thirteen, as can be convened without injury to the service, shall be summoned on every such court. But in no case, where it can be avoided without injury to the service, shall more than one-half, exclusive of the president, be junior to the officer to be tried. The senior officer shall always preside and the others shall take place according to their rank (R. S., sec. 1624, art. 39).

B-42. Article 40. Oaths of members and judge advocate.—The president of the general court martial shall administer the following oath or affirmation to the judge advocate or person officiating as such:

"I, A B, do swear (or affirm) that I will keep a true record of the evidence given to and the proceedings of this court; that I will not divulge or by any means disclose the sentence of the court until it shall have been approved by the proper authority; and that I will not at any time divulge or disclose the vote or opinion of any particular member of the court, unless required so to do before a court of justice in due course of law."

This oath or affirmation being duly administered, each member of the court, before proceeding to trial, shall take the following oath or affirmation, which shall be administered by the judge advocate or person officiating as such:

"I, A B, do swear (or affirm) that I will truly try without prejudice or partiality, the case now depending, according to the evidence which shall come before the court, the rules for the government of the Navy, and my own conscience; that I will not by any means divulge or disclose the sentence of the court until it shall have been approved by the proper authority; and that I will not at any time divulge or disclose the vote or opinion of any particular member of the court, unless required so to do before a court of justice in due course of law" (R. S., sec. 1624, art. 40).

B-43. Article 41. Oath of witness.—An oath or affirmation in the following form shall be administered to all witnesses, before any court martial, by the president thereof:

"You do solemnly swear (or affirm) that the evidence you shall give in the case now before this court shall be the truth, the whole truth, and nothing but the truth, and that you will state everything within your knowledge in relation to the charges. So help you God (or 'this you do under the pains and penalties of perjury')" (R. S., sec. 1624, art. 41).

B-44. Article 42. (a) Contempts of court.—Whenever any person refuses to give his evidence or to give it in the manner provided by these articles, or prevaricates, or behaves with contempt to the court, it shall be lawful for the court to imprison him for any time not exceeding two months: *Provided*, That the person charged shall, at his own request but not otherwise, be a competent witness before a court martial or court of inquiry, and his failure to make such request shall not create any presumption against him (R. S. sec. 1624, art. 42; Mar. 16, 1878, c. 37, 20 Stat. 30).

(b) **Witnesses; process for.**—A naval court martial or court of inquiry shall have power to issue like process to compel witnesses to appear and testify

which United States courts of criminal jurisdiction within the State, Territory, or District where such naval court shall be ordered to sit may lawfully issue (Feb. 16, 1909, c. 131, sec. 11, 35 Stat. 621).

(c) *Refusal of witness to appear or testify; privilege.*—Any person duly subpoenaed to appear as a witness before a general court martial or court of inquiry of the Navy, who willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or produce documentary evidence, which such person may have been legally subpoenaed to produce, shall be deemed guilty of a misdemeanor, for which such person shall be punished on information in the district court of the United States; and it shall be the duty of the United States district attorney, on the certification of the facts to him by such naval court to file an information against and prosecute the person so offending, and the punishment of such person, on conviction, shall be a fine of not more than \$500 or imprisonment not to exceed six months, or both, at the discretion of the court: *Provided*, That this shall not apply to persons residing beyond the State, Territory, or District in which such naval court is held, and that the fees of such witness and his mileage at the rates provided for witnesses in the United States district court for said State, Territory, or District shall be duly paid or tendered said witness, such amounts to be paid by the Bureau of Supplies and Accounts out of the appropriation for compensation of witnesses: *Provided further*, That no witness shall be compelled to incriminate himself or to answer any question which may tend to incriminate or degrade him (Feb. 16, 1909, c. 131, sec. 12, 35 Stat. 622).

B-45. Article 43. Charges and specifications; arrest of accused.—The person accused shall be furnished with a true copy of the charges, with the specifications, at the time he is put under arrest; and no other charges than those so furnished shall be urged against him at the trial, unless it shall appear to the court that intelligence of such other charge had not reached the officer ordering the court when the accused was put under arrest, or that some witness material to the support of such charge was at that time absent and can be produced at the trial; in which case reasonable time shall be given to the accused to make his defense against such new charge (R. S., sec. 1624, art 43).

B-46. Article 44. Duty of officer arrested.—Every officer who is arrested for trial shall deliver up his sword to his commanding officer and confine himself to the limits assigned him, on pain of dismissal from the service (R. S., sec. 1624, art. 44).

B-47. Article 45. Suspension of proceedings.—When the proceedings of any general court martial have commenced, they shall not be suspended or delayed on account of the absence of any of the members, provided five or more are assembled; but the court is enjoined to sit from day to day, Sundays excepted, until sentence is given, unless temporarily adjourned by the authority which convened it (R. S., sec. 1624, art. 45).

B-48. Article 46. Absence of members.—No member of a general court martial shall, after the proceedings are begun, absent himself therefrom, except in case of sickness, or of an order to go on duty from a superior officer, on pain of being cashiered (R. S., sec. 1624, art. 46).

B-49. Article 47. Witnesses examined in absence of a member.—Whenever any member of a court martial, from any legal cause, is absent from the court after the commencement of a case, all the witnesses who have been examined during his absence must, when he is ready to resume his seat, be recalled by the court, and the recorded testimony of each witness so examined must be

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read over to him, and such witness must acknowledge the same to be correct and be subject to such further examination as the said member may require. Without a compliance with this rule, and an entry thereof upon the record, a member who shall have been absent during the examination of a witness shall not be allowed to sit again in that particular case (R. S., sec. 1624, art. 47).

B-50. Article 48. Suspension of pay.—Whenever a court martial sentences an officer to be suspended, it may suspend his pay and emoluments for the whole or any part of the time of his suspension (R. S., sec. 1624, art. 48).

PUNISHMENTS AND SENTENCES; IN GENERAL

B-51. Article 49. Prohibited punishments.—In no case shall punishment by flogging, or by branding, marking, or tattooing on the body be adjudged by any court martial or be inflicted upon any person in the Navy. The use of irons, single or double, is abolished, except for the purpose of safe custody, or when part of a sentence imposed by a general court martial (R. S., sec. 1624, art. 49; Feb. 16, 1909, c. 131, sec. 8, 35 Stat. 621).

B-52. Article 50. Sentences, how determined.—No person shall be sentenced by a court martial to suffer death, except by the concurrence of two-thirds of the members present, and in the cases where such punishment is expressly provided in these articles. All other sentences may be determined by a majority of votes (R. S., sec. 1624, art. 50).

B-53. Article 51. Adequate punishment; recommendation to mercy.—It shall be the duty of a court martial, in all cases of conviction, to adjudge a punishment adequate to the nature of the offense; but the members thereof may recommend the person convicted as deserving of clemency, and state, on the record, their reasons for so doing (R. S., sec. 1624, art. 51).

B-54. Article 52. Authentication of judgment.—The judgment of every court martial shall be authenticated by the signature of the president, and of every member who may be present when said judgment is pronounced, and also of the judge advocate (R. S., sec. 1624, art. 52).

B-55. Article 53. Confirmation of sentence.—No sentence of a court martial, extending to the loss of life, or to the dismissal of a commissioned or warrant officer, shall be carried into execution until confirmed by the President. All other sentences of a general court martial may be carried into execution on confirmation of the commander of the fleet or officer ordering the court (R. S., sec. 1624, art. 53).

B-56. Article 54. (a) Remission and mitigation of sentence.—Every officer who is authorized to convene a general court martial shall have power, on revision of its proceedings, to remit or mitigate, but not to commute, the sentence of any such court which he is authorized to approve and confirm (R. S., sec. 1624, art. 54).

(b) Power of Secretary of Navy over proceedings and sentences of courts martial.—The Secretary of the Navy may set aside the proceedings or remit or mitigate, in whole or in part, the sentence imposed by any naval court martial convened by his order or by that of any officer of the Navy or Marine Corps (Feb. 16, 1909, c. 131, sec. 9, 35 Stat. 621).

COURTS OF INQUIRY

B-57. Article 55. By whom convened.—Courts of inquiry may be convened by the President, the Secretary of the Navy, the commander of a fleet or squadron,

and by any officer of the naval service authorized by law to convene general courts martial (R. S., sec. 1624, art. 55; Aug. 29, 1916, c. 417, 39 Stat. 586).

B-58. Article 56. Constitution.—A court of inquiry shall consist of not more than three commissioned officers as members, and of a judge advocate, or person officiating as such (R. S., sec. 1624, art. 56).

B-59. Article 57. Powers.—Courts of inquiry shall have power to summon witnesses, administer oaths, and punish contempts, in the same manner as courts martial; but they shall only state facts, and shall not give their opinion, unless expressly required so to do in the order for convening (R. S., sec. 1624, art. 57).

B-60. Article 58. Oath of members and judge advocate.—The judge advocate, or person officiating as such shall administer to the members the following oath or affirmation: "You do swear (or affirm) well and truly to examine and inquire, according to the evidence, into the matter now before you, without partiality." After which the president shall administer to the judge advocate or person officiating as such, the following oath or affirmation: "You do swear (or affirm) truly to record the proceedings of this court and the evidence to be given in the case in hearing" (R. S., sec. 1624, art. 58).

B-61. Article 59. Rights of party or attorney.—The party whose conduct shall be the subject of inquiry, or his attorney, shall have the right to cross-examine all the witnesses (R. S., sec. 1624, art. 59).

B-62. Article 60. Proceedings; authentication; use in evidence.—The proceedings of courts of inquiry shall be authenticated by the signature of the president of the court and of the judge advocate, and shall, in all cases not capital, nor extending to the dismissal of a commissioned or warrant officer, be evidence before a court martial, provided oral testimony cannot be obtained (R. S., sec. 1624, art. 60).

LIMITATION OF TRIAL AND PUNISHMENT

B-63. Article 61. Limitation of trials; offenses in general.—No person shall be tried by court martial or otherwise punished for any offense, except as provided in the following article, which appears to have been committed more than two years before the issuing of the order for such trial or punishment, unless by reason of having absented himself, or of some other manifest impediment he shall not have been amenable to justice within that period (R. S., sec. 1624, art. 61; Feb. 25, 1895, c. 128, 28 Stat. 680).

B-64. Article 62. Desertion in time of peace.—No person shall be tried by court martial or otherwise punished for desertion in time of peace committed more than two years before the issuing of the order for such trial or punishment, unless he shall meanwhile have absented himself from the United States, or by reason of some other manifest impediment shall not have been amenable to justice within that period. In which case the time of his absence shall be excluded in computing the period of the limitation: *Provided*, That said limitation shall not begin until the end of the term for which said person was enlisted in the service (R. S., sec. 1624, art. 62; Feb. 25, 1895, c. 128, 28 Stat. 680).

B-65. Article 63. Punishment for offenses in time of peace.—Whenever, by any of the articles for the government of the Navy of the United States, the punishment on conviction of an offense is left to the discretion of the court martial, the punishment therefor shall not, in time of peace, be in excess of a limit which the President may prescribe (R. S., sec. 1624, art. 63; Feb. 27, 1895, c. 137, 28 Stat. 689).

APPENDIX B

DECK COURTS

B-66. Article 64. (a) Officers authorized to order.—All officers of the Navy and Marine Corps who are authorized to order either general or summary courts martial may order deck courts upon enlisted men under their command, for minor offenses now triable by summary court martial (Aug. 29, 1916, c. 417, 39 Stat. 586).

(b) Constitution and powers.—Deck courts shall consist of one commissioned officer only, who, while serving in such capacity shall have power to administer oaths, to hear and determine cases, and to impose either a part or the whole, as may be appropriate, of any one of the punishments prescribed by article 30 of the Articles for the government of the Navy: *Provided*, That in no case shall such courts adjudge discharge from the service or adjudge confinement or forfeiture of pay for a longer period than twenty days (Feb. 16, 1909, c. 131, sec. 2, 35 Stat. 621).

(c) Recorder.—Any person in the Navy under command of the officer by whose order a deck court is convened may be detailed to act as recorder thereof (Feb. 16, 1909, c. 131, sec. 3, 35 Stat. 621).

(d) Approval of sentence of deck court.—All sentences of deck courts may be carried into effect upon approval of the convening authority or his successor in office, who shall have full power as reviewing authority to remit or mitigate, but not to commute, any such sentence and to pardon any punishment such court may adjudge; but no sentence of a deck court shall be carried into effect until it shall have been so approved or mitigated (Feb. 16, 1909, c. 131, secs. 4, 17, 35 Stat. 621, 623).

(e) Rules governing.—Deck courts shall be governed in all details of their constitution, powers, and procedure, except as herein provided, by such rules and regulations as the President may prescribe (Feb. 16, 1909, c. 131, sec. 5, 35 Stat. 621).

(f) Records of proceedings; filing and review.—The records of the proceedings of deck courts shall contain such matters only as are necessary to enable the reviewing authorities to act intelligently thereon, except that if the party accused demands it within thirty days after the decision of the deck court shall become known to him, the entire record or so much as he desires shall be sent to the reviewing authority. Such records, after action thereon by the convening authority, shall be forwarded directly to, and shall be filed in, the office of the Judge Advocate General of the Navy, where they shall be reviewed, and, when necessary, submitted to the Secretary of the Navy for his action (Feb. 16, 1909, c. 131, sec. 6, 35 Stat. 621).

(g) Objection to trial by deck court.—No person who objects thereto shall be brought to trial before a deck court. Where such objection is made by the person accused, trial shall be ordered by summary or by general court martial, as may be appropriate (Feb. 16, 1909, c. 131, sec. 7, 35 Stat. 621).

MISCELLANEOUS PROVISIONS

B-67. Article 65. Courts martial; officers of auxiliary naval forces.—When actively serving under the Navy Department in time of war or during the existence of an emergency, pursuant to law, as a part of the naval forces of the United States, commissioned officers of the Naval Reserve, Marine Corps Reserve, Naval Militia, Coast Guard, Lighthouse Service, Coast and Geodetic Survey, and Public Health Service are empowered to serve on nava.

courts martial and deck courts under such regulations necessary for the proper administration of justice and in the interests of the services involved, as may be prescribed by the Secretary of the Navy (Oct. 6, 1917, c. 93, 40 Stat. 393; July 1, 1918, c. 114, 40 Stat. 708; Feb. 28, 1925, c. 374, secs. 1, 28, 43 Stat. 1080, 1088).

B-68. Article 66. Courts martial and punishments in hospitals and hospital ships.—When empowered by the Secretary of the Navy pursuant to article 26 to order summary courts martial, the commanding officer of a naval hospital or hospital ship shall be empowered to order such courts and deck courts, and inflict the punishments which the commander of a naval vessel is authorized by law to inflict upon all enlisted men of the naval service attached thereto, whether for duty or as patients (Aug. 29, 1916, c. 417, 39 Stat. 536).

B-69. Article 67. Authority of officers of separate organization of marines.—When a force of marines is embarked on a naval vessel, or vessels, as a separate organization, not a part of the authorized complement thereof, the authority and powers of the officers of such separate organizations of marines shall be the same as though such organization were serving at a navy yard on shore (3), but nothing herein shall be construed as impairing the paramount authority of the commanding officer of any naval vessel over the vessel under his command and all persons embarked thereon (Aug. 29, 1916, c. 417, 39 Stat. 586).

B-70. Article 68. Depositions in naval courts.—The depositions of witnesses may be taken on reasonable notice to the opposite party, and when duly authenticated, may be put in evidence before naval courts, except in capital cases and cases where the punishment may be imprisonment or confinement for more than one year as follows:

First, depositions of civilian witnesses residing outside the State, Territory, or District in which a naval court is ordered to sit.

Second, depositions of persons in the naval or military service stationed or residing outside the State, Territory, or District in which a naval court is ordered to sit, or who are under orders to go outside of such State, Territory, or District.

Third, where such naval court is convened on board a vessel of the United States, or at a naval station not within any State, Territory, or District of the United States, the depositions of witnesses may be taken and used as herein provided whenever such witnesses reside or are stationed at such a distance from the place where said naval court is ordered to sit, or are about to go to such a distance as, in the judgment of the convening authority, would render it impracticable to secure their personal attendance (Feb. 16, 1909, c. 131, sec. 16, 35 Stat. 622).

B-71. Article 69. Oaths for purpose of naval justice, etc.—Judges advocate of naval general courts martial and courts of inquiry, and all commanders in chief of naval squadrons, commandants of navy yards and stations, officers commanding vessels of the Navy, and recruiting officers of the Navy, and the adjutant and inspector, assistants adjutant and inspector, commanding officers, recruiting officers of the Marine Corps, and such other officers of the regular Navy and Marine Corps, of the Naval Reserve, and of the Marine Corps Re-

(3) The commanding officer of marines at a navy yard or barracks is clothed with the same authority for the purpose of enforcing discipline among the officers and men under his command as that which rests, for similar purposes, in the commanding officer of a vessel. (Art. 584 (1) of the regulations.)

serve, as may be hereafter designated by the Secretary of the Navy, are authorized to administer oaths for the purposes of the administration of naval justice and for other purposes of naval administration (Jan. 25, 1895, c. 45, 28 Stat. 639; Mar. 3, 1901, c. 834, 31 Stat. 1086; Mar. 4, 1917, c. 180, 39 Stat. 1171; July 1, 1918, c. 114, 40 Stat. 708; Feb. 28, 1925, c. 374, sec. 1, 43 Stat. 1080).

B-72. Article 70. Investigations; oaths of witnesses.—Any officer of the Navy or Marine Corps detailed to conduct an investigation, and the recorder, and if there be none the presiding officer, of any naval board appointed for such purpose, shall have authority to administer an oath to any witness attending to testify or depose in the course of such investigation (R. S., sec. 183; Feb. 13, 1911, c. 43, 36 Stat. 898).

B-73. Meaning of "officers" and "superior officers" as used in the Articles for the Government of the Navy.—Within the meaning of the Articles for the Government of the Navy, unless there be something in the context or subject matter repugnant to or inconsistent with such construction, *officers* shall mean commissioned and warrant officers; *superior officers* shall be held to include petty officers of the Navy and noncommissioned officers of the Marine Corps, in addition to the officers enumerated.

B-74. Marine Corps is subject to naval law and in some circumstances to Articles of War.—Section 715, title 34, of the United States Code provides that "The Marine Corps shall, at all times, be subject to the laws and regulations established for the government of the Navy, except when detached for service with the Army by order of the President; and when so detached they shall be subject to the rules and articles of war prescribed for the government of the Army; *Provided*, That an officer or soldier of the Marine Corps when so detached may be tried by military court martial for an offense committed against the laws for the government of the naval service prior to his detachment, and for an offense committed against the Articles of War he may be tried by naval court martial after such detachment ceased."

B-75. Members of the Medical Corps serving with marines detached for service with the Army are subject to the Articles of War.—The United States Code (title 34, sec. 716), provides that "Officers and enlisted men of the Medical Department of the Navy, serving with a body of marines detached for service with the Army in accordance with the provisions of the preceding section, shall, while so serving, be subject to the rules and articles of war prescribed for the government of the Army in the same manner as the officers and men of the Marine Corps while so serving." In order to complete a showing of jurisdiction in such a case it is preferable to aver that the accused was "at the time serving with a body of marines detached for service with the Army by order of the President."

B-76. Other persons not in the military service of the United States who are subject to the Articles for the Government of the Navy.—The U. S. Code (title 34, sec. 1201), provides: "In addition to the persons now subject to the Articles for the Government of the Navy, all persons, other than persons in the military service of the United States, outside the continental limits of the United States accompanying or serving with the United States Navy, the Marine Corps, or the Coast Guard when serving as a part of the Navy, including but not limited to persons employed by the Government directly, or by contractors or subcontractors engaged in naval projects, and all persons, other than persons in the military service of the United States, within an area leased by the United States which is without the territorial jurisdiction thereof and which is under the control of the Secretary of the Navy, shall, in time of war or national emergency, be subject to the Articles for the Government of the Navy except insofar as these

articles define offenses of such a nature that they can be committed only by naval personnel: *Provided*, That the jurisdiction herein conferred shall not extend to Alaska, the Canal Zone, the Hawaiian Islands, Puerto Rico, or the Virgin Islands, except the islands of Palmyra, Midway, Johnston, and that part of the Aleutian Islands west of longitude one hundred and seventy-two degrees west (Mar. 22, 1943, ch. 18, 57 Stat. 41)."

APPENDIX C

DELIVERY OF MEN TO CIVIL AUTHORITIES—HABEAS CORPUS PROCEEDINGS

C-1. Commanding officer must notify department and await instructions before delivering men to civil authorities.—In no case will commanding officers of vessels or shore stations of the Navy or Marine Corps deliver to the civil authorities, State or Federal, any person in their custody or under their control without first communicating with the Secretary of the Navy and awaiting his instructions. The Secretary of the Navy will promptly issue the necessary orders in the case or make request upon the Attorney General, in accordance with title 5, chapter 5, U. S. Code, to furnish such legal assistance to the commanding officer concerned as the interests of the United States involved in such case may demand.

C-2. Same: Refers to all cases.—The words "in no case", as used in the above section, are intended to refer to every case in which the civil authorities, Federal or State, request or demand the delivery to them of any officer or enlisted man in the Navy or Marine Corps, whether for the purpose of determining the legality of his detention by the naval authorities, or of trying him for a violation of the Federal or State laws, or of securing the testimony of a naval prisoner as a witness in a civil court. The instructions contained in the above paragraph accordingly apply to and include all cases in which writs of habeas corpus, requisitions of the governor or chief executive of any State, warrants ad testificandum, or other civil process of any kind are served on commanding officers of the Navy or Marine Corps, afloat or ashore, including navy yards where the State has retained jurisdiction for service of process, for the purpose of securing the delivery of any person under their control to such civil authorities.

C-3. Report to be telegraphic.—In such cases the report to the Secretary of the Navy will be telegraphic, or, if within short distance, by telephone, to be followed immediately by letter containing a full statement of the facts. In order to expedite action, the telegraphic report will be addressed to the Judge Advocate General direct. If communicating by telephone, connection should be made with the Judge Advocate General's office.

C-4. Delivery of men to State authorities for trial.—In every case in which the Secretary of the Navy authorizes the delivery of any person in the Navy or Marine Corps to the civil authorities of a State, *for trial*, such person's commanding officer will, before making such delivery, obtain from the Governor or other duly authorized officer of such State a written agreement that he will be informed of the outcome of the trial and that the person so delivered will be returned to the naval authorities at the place of his delivery or issued transportation to the nearest receiving ship (or marine barracks in the case of Marines) without expense to the United States or to the person delivered immediately upon the completion of his trial for the alleged misconduct which occasioned his delivery to the civil authorities, in the event that he is acquitted upon said trial, or immediately upon satisfying the sentence of the court in the

event that he is convicted and a sentence imposed, or upon other disposition of his case, provided that the naval authorities shall then desire his return.

C-5. Foregoing applies to navy yards where State has retained jurisdiction.—The foregoing sections apply to cases where the delivery of a person in the Navy or Marine Corps attached to a navy yard or station, or serving on board a vessel at such yard or station, is demanded by the civil authorities of the State in which such navy yard or station is located, although such State has expressly retained jurisdiction to serve civil or criminal process within the limits of the navy yard or station in question.

C-6. Action where men are convicted by civil authorities.—Whenever men delivered to the civil authorities for trial are convicted, the commanding officer will make full report of the offense and sentence to the Bureau of Navigation or the Major General Commandant of the Marine Corps, as the case may be, with recommendation as to whether the man should be discharged as undesirable.

C-7. Form of agreement as to expenses.—The following is suggested as a form of agreement acceptable to the department in the cases referred to in section C-4:

"In consideration of the delivery of ———, United States Navy (or United States Marine Corps), to ———, at ———, for trial upon the charge of ———, I hereby agree, pursuant to the authority vested in me as ———, that the commanding officer of the U. S. S. ——— will be informed of the outcome of the trial and that said ——— will be returned to the naval authorities at the aforesaid place of his delivery or issued transportation to the nearest receiving ship (or marine barracks, in the case of Marines) without expense to the United States or the person delivered immediately upon the completion of his trial upon the charge aforesaid in the event that he is acquitted upon said trial, or immediately upon satisfying the sentence of the court in the event that he is convicted and a sentence imposed, or upon other disposition of his case, provided that the naval authorities shall then desire his return."

The department considers this agreement substantially complied with when the man is furnished transportation back to his station and necessary cash to cover his incidental expenses en route thereto, and the Navy Department so informed.

C-8. Agreement not required of Federal authorities.—An agreement as to expenses will not be exacted as a condition to the delivery of men to the Federal authorities either in response to writs of habeas corpus, as witnesses, or for trial. However, in such cases the expenses will be defrayed as follows: The person who produces a man in a Federal court in response to a writ of habeas corpus or as a witness will keep an accurate account of expenses, and present same to the United States marshal for the district in which the court is sitting, who is the proper officer to settle such account, including the expenses of the return trip. Men desired by the Federal authorities for trial will be called for and taken into custody by a United States marshal or deputy marshal; in such case the expense of transporting the man to the place of trial will, of course, be defrayed by the marshal. If the man is not convicted, or the case is dismissed, the man will be returned to the Navy and the necessary expenses paid from an appropriation under the control of the Department of Justice.

C-9. Governor's requisition necessary in certain cases.—In cases in which the delivery of any person in the Navy or Marine Corps for trial is desired by the

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civil authorities of a State, and such person is not attached to or serving at a navy yard or other place within the limits of said State, requisition for the delivery of the party must be made by the Governor or chief executive of such State, addressed to the Secretary of the Navy, showing that the party desired is charged with a crime in that State for which he could be extradited under the Constitution of the United States, the enactments of Congress, or the laws of the State desiring his delivery. Such requisition should be forwarded to the Secretary of the Navy by mail for preliminary examination, together with the appointment of the agent of the State to whom it is desired that delivery be made. Thereupon, if the papers are found to be in due form, the Secretary of the Navy will send the necessary authorization to the designated agent permitting him to take the party into custody upon compliance with section C-4.

C-10. Naval prisoners wanted by civil authorities for trial.—In any case in which the delivery of a person in the Navy or Marine Corps *for trial* is desired by the civil authorities, Federal or State, and such person is a naval prisoner (which includes any person serving sentence of court martial or in custody awaiting trial by court martial or disposition of charges against him), he will not, in general, be delivered to the Federal or State authorities until he has served the sentence of the naval court martial, or his case has otherwise been finally disposed of by the naval authorities. However, if the Federal or State authorities desire the surrender of the party under the above circumstances upon a serious charge, such as felonious homicide, and the interests of justice would be better served by his delivery, the Secretary of the Navy may, in his discretion, discharge the man from naval custody and from his contract of enlistment and deliver him to the civil authorities for trial.

C-11. Naval prisoners as witnesses or parties in civil courts.—If the Federal or State authorities desire the attendance of a naval prisoner as a *witness* in a criminal case pending in a civil court, upon the submission of such a request to the Secretary of the Navy, authority will be given in a proper case for the production of the man in court without resort being had to a writ of habeas corpus ad testificandum. The Department, however, will not authorize the attendance of a naval prisoner in a Federal or State court, either as a party or as a witness in private litigation pending before such court, as in such cases the court may grant a postponement or a continuance of the trial; but the Department will allow the deposition of such naval prisoner to be taken in the case.

C-12. Men released by civil authorities on bail.—Where a person in the Navy or Marine Corps is arrested by the Federal or State authorities for trial and returns to his ship or station on bail, the commanding officer may grant him leave of absence to appear for trial on the date set upon an official statement by the judge, prosecuting attorney, or clerk of the court, reciting the facts, giving the date on which the appearance of the man is required, and the approximate length of time that should be covered by such leave of absence.

C-13. Service of subpoena or other process on persons in the Navy, interviewing of naval witnesses, and the taking of statements of naval personnel.—(a) Commanding Officers afloat or ashore are authorized to permit the service of subpoena or other process upon the person named therein, provided such person is within the jurisdiction of the court out of which the process issues, but such service will not be allowed without permission of the commanding officer first being obtained. Where the person in the naval service is on board ship or at a naval station beyond the jurisdiction of the court, it is necessary that the process be presented to the man's commanding officer who will deliver the process to the

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person named therein and inform him that, if he is willing voluntarily to accept such service, he should indicate his acceptance in the manner provided. In the event the man declines to accept service, the commanding officer will return said warrant with a statement to that effect. In cases in which service by mail is legally sufficient, the papers may be addressed to the man.

(b) Requests for permission to interview naval personnel or to obtain their statements, and inquiries relating thereto, concerning collisions between merchant vessels, damage caused by merchant vessels, and other matters involving merchant vessels, shall be forwarded to the Office of the Judge Advocate General. That office will then arrange, insofar as it is practicable, to have the personnel requested available for interview by counsel representing all parties in interest or such of them as may desire to attend at the same time. All interviews of naval personnel arranged in accordance with this subparagraph will be conducted in the presence of an officer designated by the Judge Advocate General. If, during an arranged interview, an attempt is made to develop security matters, the disclosure of which would be detrimental to the interests of the United States, the officer present will immediately preclude that line of inquiry.

It is intended that the procedure provided by this subparagraph shall be administered in a manner that will preserve at all times the Navy Department's complete impartiality and total disinterestedness in any litigation arising out of the subject matter of the interview.

If any of the parties in interest desire statements from naval personnel, each statement shall be prepared under the direction of the officer present for the purpose of preventing the disclosure of any information that may be classified. A copy of the statement as signed by the maker shall be furnished to each party in interest, the person making the statement, and the Office of the Judge Advocate General (Admiralty Section).

(c) Subparagraph (a) deals with the service of process and obtaining testimony in matters which are in litigation. Subparagraph (b) deals with matters preliminary to litigation, that is, when counsel, agents, or investigators for steamship companies or underwriters seek to interview naval personnel and to obtain their statements, and is restricted to cases of collision between merchant vessels and cases involving damage caused by merchant vessels. It does not apply where interests of the United States are involved. See Naval Courts and Boards, section 726.

C-14. Leave of absence may be granted person subpoenaed or served.—In such cases the commanding officer is authorized to grant leave of absence to the person subpoenaed or upon whom the process is served in order to permit him to obey the same, unless the public interests would be seriously prejudiced by his absence, in which case full report of the matter should be made to the Department. This includes cases in which the party is subpoenaed as a witness before a general court martial of a State.

C-15. Official records of the Navy not to be produced in a civil court.—Unless authorized by the Secretary of the Navy, persons in the naval service and civil employees are prohibited from producing official records or copies thereof in a civil court in answer to subpoenas duces tecum, or otherwise, and from disclosing the information described in article 113, Navy Regulations, or the secret and confidential correspondence and information described in article 2005, Navy Regulations. In all cases where copies of records are desired by or on behalf of parties to a suit, whether in a Federal or State court, such parties will be informed that it has been the invariable practice of the Navy

Department to decline to furnish in the case of legal controversies, at the request of the parties litigant, copies of papers or other information to be used in the course of the proceedings, or to grant permission to such parties or their attorneys to make preliminary or informal examination of the records, but that the department will promptly furnish copies of papers or records in such cases upon call of the court before which the litigation is pending. In all cases where the production of records in civil courts is authorized, the original records are not to leave the custody of the person producing them. However, copies of such records may be introduced into evidence.

C-16. Same: Exception.—The department has decided (1) that section C-15, *supra*, in so far as it prohibits persons in the naval service and civil employees from producing official records or copies thereof in a civil court in answer to subpoenas duces tecum or otherwise, “unless authorized by the Secretary of the Navy”, does not apply to cases in which a subpoena duces tecum or other process is issued by a United States court requiring the production in any suit or proceeding therein pending, of files, records, reports, or other papers or documents pertaining to any claim for the benefits of the World War Veterans' Act; and any such subpoena or process shall be obeyed without prior authorization of the Secretary of the Navy in specific cases.

C-17. Habeas corpus proceedings: Federal courts.—In this connection there is quoted for the information of the service, 28 U. S. Code 456, which prescribes the time allowed for making return to writs of habeas corpus issued by the Federal courts:

“Any person to whom such writ is directed shall make due return thereof within three days thereafter, unless the party be detained beyond the distance of twenty miles; and if beyond that distance and not beyond a distance of a

(1) C. M. O. 3—1932, 19.

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hundred miles, within ten days; and if beyond the distance of a hundred miles, within twenty days."

C-18. Same: Time allowed to obey.—The person upon whom a Federal writ of habeas corpus is served can not be required to obey same in any shorter period after the service of the writ than that specified in the above section of the U. S. Code, even though the writ should in terms require that the person named therein be produced "forthwith", or "immediately", or at a specified time.

C-19. Same: Further provisions of law.—The U. S. Code, title 28, contains the following further provisions concerning habeas corpus proceedings instituted in the Federal courts:

Section 457. The person to whom the writ is directed shall certify to the court, or justice, or judge before whom it is returnable the true cause of the detention of such party.

Section 458. The person making the return shall at the same time bring the body of the party before the judge who granted the writ.

Section 459. When the writ is returned, a day shall be set for the hearing of the cause, not exceeding five days thereafter, unless the party petitioning requests a longer time.

C-20. Same: Procedure to be followed by the commanding officer.—In accordance with the foregoing sections of the U. S. Code, should instructions for any reason not be received by the commanding officer from the Secretary of the Navy by the last day of the period allowed by law for making return to a writ of habeas corpus issued by a Federal court, the commanding officer will certify to the court, or justice, or judge before whom the writ is returnable the true cause of the detention of the party, if in his custody, and will at the same time bring the body of the said party before the judge who granted the writ, and request the court to delay the hearing of the cause for the full period of five days allowed by law, so that further opportunity may be afforded for the receipt of instructions from the Secretary of the Navy. If the party is not in the custody of the officer to whom the writ is directed, he will so state in his return.

C-21. Return to writ of habeas corpus by United States court.—The return to a writ of habeas corpus issued by a United States court shall be made in accordance with the following form. A copy of the brief of authorities set forth in section C-25 shall be filed with the return. The return as well as all supporting papers shall be submitted to the court in triplicate:

In the District Court of the United States for the (eastern) district of
(Virginia)

UPON APPLICATION FOR WRIT OF HABEAS CORPUS

To the Honorable G—— H. R——, judge of said court (or To the said court):

1. Comes now M—— H. C——, captain, U. S. Navy (or U. S. Marine Corps), commanding officer of the ——, and by way of return to the writ of habeas corpus issued herein, certifies, in conformity with the provisions of section 457, title 28, U. S. Code, as follows, to wit:

2. That the said A—— F. B—— enlisted in the United States Navy (or in the United States Marine Corps) as —— on the —— day of —— 19——, at (Boston, Massachusetts), for a term of four years from that date.

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3. That the said A—— F. B——, at the time of his enlistment as aforesaid, stated on oath that he was born on the —— day of —— 19——, thus making him more than eighteen years of age, as will appear from a copy of the enlistment record of said A—— F. B——, hereto attached as a part of this return; that since the enlistment of said A—— F. B—— he has received pay and allowances from time to time thereunder; that on the —— day of —— 19——, the said A—— F. B—— was detained and recommended for trial by general court martial for fraudulent enlistment in the United States Navy, in violation of the act of Congress approved March 3, 1893, U. S. Code, title 34, section 1200, article 22 (b); and that said action was before the issuing of the writ herein.

4. That the said A—— F. B—— deserted from said United States Navy (or United States Marine Corps) at (Boston, Massachusetts) on the —— day of —— 19——, and remained absent in desertion until he was apprehended at (Norfolk, Virginia) on the —— day of —— 19——, and was thereupon committed to the custody of the respondent, as commanding officer of the ——; and that the said A—— F. B—— was detained and recommended for trial by general court martial for said offense of desertion in violation of article 8, section 1200, title 34, U. S. Code.

5. That the said A—— F. B—— has been duly arraigned and tried for the said offenses before a general court martial convened by order of the Secretary of the Navy (and is now held, awaiting the action of the convening authority upon the proceedings and findings of said court) (or was convicted thereof by said court and was sentenced to ——, which sentence was approved) (or was mitigated to —— and approved) on the —— day of —— 19——, by the Secretary of the Navy, as required by article 53, section 1200, title 34, U. S. Code. (A copy of the order promulgating said sentence and the action of the Secretary of the Navy thereon is hereto attached.)

6. This respondent here produces in court the body of the said A—— F. B——, as commanded by the writ of habeas corpus issued in this matter as aforesaid, but he prays that your honor (or this honorable court) will refuse to discharge the said A—— F. B—— and will return and remand him to the custody of this respondent.

Respectfully submitted.

M—— H. C——,

Captain, U. S. Navy, Commanding ——.

—— 193——.

Variation 1.—If the offense is not fraudulent enlistment by a minor under 18 years of age, omit paragraph 3 above.

Var. 2.—If the offense is fraudulent enlistment by a minor under 18 years of age without desertion, omit paragraph 4 above.

Var. 3.—If the offense is neither fraudulent enlistment by a minor under 18 years of age nor desertion, omit paragraphs 3 and 4 above and substitute an appropriate description of the offense for which the accused is detained, and state whether or not he has been recommended for trial by general court martial for said offense.

Var. 4.—If the accused has not been tried by general court martial, omit paragraph 5 above.

C-22. If the decision is adverse an appeal shall be noted.—Should the court, Federal or State, render a decision adverse to the United States, the officer making the return, or counsel, should note an appeal pending instructions from

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the Navy Department, and he shall report to the Judge Advocate General of the Navy immediately the action taken by the court and forward to the Judge Advocate General, direct, a copy of the opinion of the court as soon as it can be obtained.

C-23. Return to writ of habeas corpus by State court.—The return to a writ issued by a State court shall be made in accordance with the following form. No copy of the brief set forth in section C-25 shall be filed with the return to the writ of habeas corpus issuing from a State court.

RETURN TO WRIT OF HABEAS CORPUS BY A STATE COURT

In re A—— P. M——, private, U. S. Marine Corps.

Writ of habeas corpus. Return of respondent.

(When the writ issues from a State court, the return is made in the same manner as to a United States court, with the exception of the concluding paragraph, which should be in the following form:)

And the said respondent further makes return that he has not produced the body of the said A—— P. M——, because he holds him by authority of the United States as above set forth, and that this court (*or, your honor, as the case may be*) is without jurisdiction in the premises, and he respectfully refers to the decisions of the Supreme Court of the United States in *Ableman v. Booth* (21 Howard, 506), *Tarble's case* (13 Wallace, 397), and *Mullan v. U. S.* (212 U. S. 516), and the decision of the Circuit Court of Appeals, Ninth Circuit, in *Crouch v. U. S.* (13 F. (2d), 348), as authority for his action, and prays this court (*or, your honor*) to dismiss the writ.

W—— X. Y——,
Captain, U. S. Navy,
Commanding ——.

C-24. Habeas corpus proceedings: State courts.—State courts have no jurisdiction in habeas corpus proceedings to order the discharge of any person held by an officer of the Navy or Marine Corps by authority of the United States; however, in the event that a writ of habeas corpus should be issued by a State court to a commanding officer of the Navy or Marine Corps, afloat or ashore, the Secretary of the Navy will be communicated with immediately in accordance with section C-3; and should instructions not be received by the commanding officer from the Secretary of the Navy by the time specified in the writ, or if no definite time be specified therein, within three days after the service of the writ, the officer upon whom the writ is served will make return thereto in accordance with the instructions in the preceding section without producing the body of the accused in court.

C-25. Brief to be filed with return to a writ of habeas corpus issued by Federal court.—The applicable parts of the following brief, in triplicate, shall be submitted to the court with the return made in accordance with the provisions of section C-21:

I

JUDGMENTS OF COURTS MARTIAL ACTING WITHIN THEIR JURISDICTION ARE NOT OPEN TO REVIEW BY CIVIL COURTS

It is well settled by the authorities that the civil courts have no power to review the proceedings of a legally constituted court martial except for

the purpose of determining (a) whether such court was acting within its jurisdiction; and (b) whether its sentence was in accordance with law, and was duly approved by the proper military authority.

In the leading case of *Dynes v. Hoover* (20 How. 65, 82), it was said by Mr. Justice Wayne in delivering the opinion of the court:

With the sentences of courts martial which have been convened regularly, and have proceeded legally, and by which punishments are directed, not forbidden by law, or which are according to the laws and customs of the sea, civil courts have nothing to do, nor are they in any way alterable by them. If it were otherwise, the civil courts would virtually administer the rules and articles of war, irrespective of those to whom that duty and obligation has been confided by the laws of the United States, from whose decisions no appeal or jurisdiction of any kind has been given to the civil magistrate or civil courts.

Substantially the same proposition has been affirmed in an unbroken line of authorities as often as the question has been presented. Thus, in *Carter v. Roberts* (177 U. S. 498), it was said:

Courts martial are lawful tribunals, with authority to finally determine any case over which they have jurisdiction, and their proceedings, when confirmed as provided, are not open to review by the civil tribunals, except for the purpose of ascertaining whether the military court had jurisdiction of the person and subject matter, and whether though having such jurisdiction, it had exceeded its powers in the sentence pronounced.

The above extract from *Carter v. Roberts* was quoted with approval in *Carter v. McLaughry* (183 U. S. 401), in which case the court further stated:

We must not be understood by anything we have said as intending in the slightest degree to impair the salutary rule that the sentences of courts martial, when affirmed by the military tribunal of last resort, can not be revised by the civil courts save only when void because of an absolute want of power, and not merely voidable because of the defective exercise of power possessed.

Specifically, it has been decided that where the military authorities proceed regularly within their jurisdiction they can not be interfered with "no matter what errors may be committed in the exercise of their lawful jurisdiction" (*In re McVey*, 23 Fed. Rep. 878).

Again in the case of *Swain v. United States* (28 Ct. Cls. 217, affirmed 165 U. S. 563), it was stated:

Undoubtedly errors are committed by courts martial which a civil tribunal would regard as sufficient ground for a reversal for their judgments if it were sitting as an appellate court. But there is always this radical difference between an appellate court sitting for the correction of errors and a civil court into which the record of a court martial is collateral—in the former there is not a failure of justice; the appellate court may reverse a judgment or prescribe another or award a new trial; in the latter, the court must either give full effect to the sentence or pronounce it wholly void.

That the judgments of courts martial acting within their jurisdiction can not be reviewed by civil courts for errors of procedure, even when such errors are in direct contravention of statutes, see *Ex parte Tucker* (212 Fed. Rep. 569) and *Frazier v. Anderson* (2 Fed. (2d) 36). In the latter case it was held that:

Civil courts are not courts of error to review proceedings and sentences of legally organized courts martial. On habeas corpus to effect the release of Federal prisoners convicted by Army court martial for violation of the Articles of War, the inquiry of the civil court is limited to the question of jurisdiction of the court martial.

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Further in the case of *Ex parte Dickey* (204 Fed. Rep. 322), in which it was held that:

Where a court martial had jurisdiction to try petitioner for an offense against the naval regulations and to impose sentence authorized thereby, a civil court in a habeas corpus proceeding could only review the question of jurisdiction, and could not pass on alleged errors of law committed by the court martial or on the severity of the sentence imposed.

In more recent cases, such as *Tullidge v. Biddle* (4 Fed. (2d) 897), it was held that:

On petition for habeas corpus by one held in confinement after conviction by naval court martial, the sole questions presented are whether the petitioner was convicted by a court having jurisdiction of his person and the offense, and whether the sentence pronounced was one within the power of the court (citing *Collins v. McDonald*, 258 U. S. 416).

And in *Johnson v. Biddle* (12 Fed. (2d), 366):

The only question that can be considered in habeas corpus proceedings instituted by a soldier is whether or not the court martial was without jurisdiction to hear and determine the charge against the petitioner. (citing *Ex parte Mason*, 105 U. S. 696, 697; *In re Grimley*, 137 U. S. 147, 150; *Carter v. Roberts*, 177 U. S. 496; *Carter v. McClaughry*, 183 U. S. 365; *Collins v. McDonald*, 258 U. S. 416).

And again in *Crouch v. U. S.* (13 Fed. (2d) 348):

Proceedings of court martial are not reviewable in other courts, except on showing that court martial was not properly constituted, or was without jurisdiction of person or subject matter, or exceeded its power. Though court martial is a court of special and limited jurisdiction, its proceedings, when confirmed as provided by law, are not open to review in other courts, except on affirmative showing that court martial was not properly constituted, or was without jurisdiction of person or subject matter, or exceeded its power in the judgment rendered.

In cases which do not extend to the loss of life or to the dismissal of a commissioned or warrant officer, the Secretary of the Navy is "the final reviewing authority provided by law to act upon records of courts martial" (*Ex parte Dickey*, 204 Fed. Rep. 322, 326). Where the court was ordered by the Secretary of the Navy, its sentence can not be carried into effect until confirmed by him (*Dynes v. Hoover*, 20 How. 81); where the court was ordered by an officer of the Navy vested with such authority, its sentence may be carried into execution on confirmation by such officer (art. 53, sec. 1200, title 34, U. S. Code). Where the sentence extends to loss of life, or to the dismissal of a commissioned or warrant officer, it can not be carried into execution until confirmed by the President (art. 53, sec. 1200, title 34, U. S. Code). In any of these cases, where the sentence has been so confirmed by the proper reviewing officer, "it becomes final, and must be executed, unless the President pardons the offender. It is in the nature of an appeal to the officer ordering the court, who is made by the law the arbiter of the legality and propriety of the court's sentence. When confirmed, it is altogether beyond the jurisdiction or inquiry of any civil tribunal whatever, unless it shall be in a case in which the court had not jurisdiction over the *subject matter or charge*, or one in which, having jurisdiction over the subject matter, it has failed to observe the rules prescribed by the statute for its exercise" (*Dynes v. Hoover*, 20 How. 81). As to the effect of confirmation of the sentence "by the military tribunal of last resort", see also *Carter v. McClaughry* (183 U. S. 401), *Ex parte Dickey* (204 Fed. Rep. 322, 326), and *Crouch v. U. S.* (13 F. (2d) 348).

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II

SUFFICIENCY OF CHARGES AND SPECIFICATIONS

In accordance with the established procedure, naval courts martial, at the outset of a trial, examine the charges and specifications and determine whether or not they are "in due form and technically correct." The decision of the court martial on this point is not subject to review by a civil court.

"Where a charge against a person tried by a military court is within the court's jurisdiction, and is authorized by the Army or Navy Regulations, the manner of setting out the offense is a matter of pleading, rather than jurisdiction, the sufficiency of which is for the exclusive determination of the court martial" (*Ex parte Dickey*, 204 Fed. Rep. 322. See also *Collins v. McDonald*, 258 U. S. 416).

In the case of *Carter v. McClaughry* (183 U. S. 355, 400) it was contended that the offense of embezzlement by an officer of the Army was erroneously charged as a violation of article 96. Articles of War, which provides for the punishment of offenses "to the prejudice of good order and military discipline." In overruling this contention, it was stated by the Supreme Court:

We should suppose that embezzlement would be detrimental to the service within the intent and meaning of the article, but it is enough that it was peculiarly for the court martial to determine whether the crime charged was "to the prejudice of good order and military discipline" (*Swaim v. United States*, 165 U. S. 553; *Smith v. Whitney*, 116 U. S. 178; *United States v. Fletcher*, 148 U. S. 84).

In *Swaim v. United States*, which involved a sentence under the 62d article of war, Mr. Justice Shiras, delivering the opinion, said: "But, as the authorities heretofore cited show, this is the very matter that falls within the province of courts martial, and in respect of which their conclusions can not be controlled or reviewed by the civil courts. As was said in *Smith v. Whitney* (116 U. S. 178), 'of questions not depending upon the construction of the statutes, but upon unwritten military law or usage, within the jurisdiction of courts martial, military or naval officers, from their training and experience in the service, are more competent judges than the courts of common law. * * * Under every system of military law for the government of either land or naval forces, the jurisdiction of courts martial extends to the trial and punishment of acts of military or naval officers which tend to bring disgrace and reproach upon the service of which they are members, whether those acts are done in the performance of military duties, or in a civil position, or in a social relation, or in private business.'"

Congress has expressly vested naval courts martial with jurisdiction over "all offenses committed by persons belonging to the Navy", whether at sea or on shore and whether specifically provided for or not (Sec. 1200, title 34, U. S. Code, arts. 22 and 23).

III

FRAUDULENT ENLISTMENT

Where disciplinary proceedings have been commenced against an enlisted man of the Navy on the ground that he has committed an offense cognizable by court martial, a civil court is not empowered to order his release notwithstanding the fact that his enlistment in the Navy may have been fraudulent.

In the leading case of *In re Grimley* (137 U. S. 147) the petitioner, after conviction of desertion by general court martial, sought to obtain his release on

the ground that his original enlistment in the Army was void because at the time of his enlistment he was over the statutory age. In overruling this contention, the Supreme Court stated:

It can not be doubted that the civil courts may in any case inquire into the jurisdiction of a court martial, and, if it appears that the party condemned was not amenable to its jurisdiction, may discharge him from the sentence. And, on the other hand, it is equally clear that by *habeas corpus* the civil courts exercise no supervisory or correcting power over the proceedings of a court martial; and that no mere errors in their proceedings are open to consideration. The single inquiry, the test, is jurisdiction. That being established, the *habeas corpus* must be denied and the petitioner remanded. That wanting, it must be sustained and the petitioner discharged. If Grimley was an enlisted soldier, he was amenable to the jurisdiction of the court martial; and the principal question the one ruled against the Government, is whether Grimley's enlistment was void by reason of the fact that he was over 35 years of age.

In this connection, see also *Ex parte Beaver* (271 F. 494); *Reed v. Cushman* (251 F. 873); *Ex parte Rush* (246 F. 173); *Ex parte Dostal* (243 F. 669); and *Ex parte Foley* (243 F. 472).

So also in the case of *In re Morrissey* (137 U. S. 157), where the petitioner enlisted while under the statutory age without the consent of his parents or guardian, and then deserted, the Supreme Court held that "he was not only *de facto*, but *de jure*, a soldier—amenable to military jurisdiction"; that "the age at which an infant shall be competent to do any acts or perform any duties, military or civil, depends wholly upon the legislature"; and that the statutory requirement of consent in such cases "is for the benefit of the parent or guardian. It means simply that the Government will not disturb the control of parent or guardian over his or her child without consent. It gives the right to such parent or guardian to invoke the aid of the court and secure the restoration of a minor to his or her control, but it gives no privilege to the minor."

A minor between the ages of 18 and 21 years may be enlisted in the Navy without the consent of his parents or guardian. (*Thomas v. Winn*, 122 Fed. Rep. 395; see also *In re Doyle*, 18 Fed. Rep. 369; *In re Norton*, 98 Fed. Rep. 606). This applies also to enlistments of minors in the Marine Corps, which are governed by the laws relating to the Navy. (See *In re Doyle*, 18 Fed. Rep. 369; *Elliott v. Harris*, 24 App. D. C. 11; overruling *In re Shugrue*, 3 Mackey, 324; and following *United States v. Dunn*, 120 U. S. 249.)

Where a minor under the age of 18 years enlists in the Navy or Marine Corps without the consent required by the statute, his release will not be ordered by a civil court, even upon application of his parents or guardian, where disciplinary action has been commenced by the naval authorities, at least until he has answered and satisfied the charges pending against him. (*United States v. Reaves*, 126 Fed. Rep. 127; *Dillingham v. Booker*, 163 Fed. Rep. 696; 16 Ann. Cas. 127; *Ex parte Rock*, 171 Fed. Rep. 240; see also *Solomon v. Davenport*, 87 Fed. Rep. 318; *In re Lessard*, 134 Fed. Rep. 305; *In re Scott*, 144 Fed. Rep. 79; *In re Rush*, 246 Fed. Rep. 174.)

By act of March 3, 1893 (sec. 1200, title 34, U. S. Code, art. 22), it was provided that "fraudulent enlistment, and the receipt of any pay or allowance thereunder, is hereby declared an offense against naval discipline and made punishable by general court martial."

CIVIL COURTS CAN NOT ORDER RELEASE OF PERSONS IN THE NAVY UNLESS IN
ACTUAL CUSTODY

The provisions of the United States Code "contemplate a proceeding against some person who has the immediate custody of the party detained, with the power to produce the body of such party before the court or judge, that he may be liberated if no sufficient reason is shown to the contrary." (*Wales v. Whitney*, 114 U. S. 574; see also *McGowan v. Moody*, 22 App. D. C. 148; *Stallings v. Splain*, 253 U. S. 339, 343; and *McNally v. Hill*, 293 U. S. 135, 136.)

In the case of *Wales v. Whitney*, it appeared that the petitioner was an officer of the Navy whose trial by general court martial had been ordered by the Secretary of the Navy, who had also issued the following order to the petitioner: "You are hereby placed under arrest and you will confine yourself to the limits of the city of Washington." The facts showed that the petitioner was not under "physical restraint"; and, as found by the Supreme Court, the above-mentioned order did not operate to restrain the movements of the petitioner any more than would have been the case had it directed him to remain in Washington to serve as a member of the court martial. In denying the petitioner's right to a writ of habeas corpus the Supreme Court stated:

In the case of a man in the military or naval service, where he is, whether as an officer or a private, always more or less subject in his movements, by the very necessity of military rule and subordination, to the orders of his superior officer, it should be made clear that some unusual restraint upon his liberty of personal movement exists to justify the issue of the writ; otherwise every order of the superior officer directing the movements of his subordinate, which necessarily to some extent curtails his freedom of will, may be held to be a restraint of his liberty, and the party so ordered may seek relief from obedience by means of a writ of *habeas corpus*.

Something more than moral restraint is necessary to make a case of *habeas corpus*. There must be actual confinement or the present means of enforcing it.

The Supreme Court further stated that had the petitioner chosen to disobey the Secretary's order, "he had nothing to do but take the next or any subsequent train from the city and leave it. There was no one at hand to hinder him. And though it is said that a file of marines or some proper officer could have been sent to arrest and bring him back, this could only be done by another order of the Secretary, and would be another arrest, and a real imprisonment under another and distinct order. Here would be a real restraint of liberty, quite different from the first. The fear of this latter proceeding, which may or may not keep Dr. Wales within the limits of the city, is a moral restraint which concerns his own convenience, and in regard to which he exercises his own will."

Variation 1.—In a case where there has not been a trial by general court martial, omit parts I and II above.

Var. 2.—In a case in which the validity of the party's enlistment is not questioned, omit part III above.

Var. 3.—If the party has been tried by court martial or is in confinement, omit part IV above.

APPENDIX D

MILITARY GOVERNMENT AND MARTIAL LAW

D-1. Military jurisdiction: Forms of.—An accompanying opinion by Chief Justice Chase in the celebrated case of *Ex parte Milligan* (1), decided by the Supreme Court in 1866, recognized, under the Constitution of the United States, three distinct forms of military jurisdiction:

(1) Military law, which was held to be that which is found in acts of Congress prescribing rules and articles of war, or otherwise providing for the government of the national forces. It is exercised both in peace and war.

(2) Military government, which was described as the exercise of military jurisdiction by a military commander, under the direction of the President, with the express or implied sanction of Congress, superseding, as far as may be deemed expedient, the local law. This form of military jurisdiction ordinarily exists only in time of war, and is exercised only without the boundaries of the United States or within States or districts occupied by rebels treated as belligerents.

(3) Martial law, which was distinguished as that branch which is called into action by Congress, or temporarily by the President when the action of Congress can not be invited, in the case of justifying or excusing peril, in time of insurrection or invasion, or of civil or foreign war, within districts or localities whose ordinary law no longer adequately secures public safety and private rights.

D-2. Same: Explanation of.—While the last two of the three forms of military jurisdiction mentioned in the preceding section belong to a wider field of jurisdiction than that ordinarily exercised in naval administration, yet it not infrequently happens that the Naval Establishment is called upon to act beyond its own particular sphere, which is governed by naval law, and must thereby assume jurisdiction over this wider field, which is based upon the laws of war. It is important, therefore, that the naval service should be familiar with the principles of military government and martial law. Unlike naval law, which is mostly statutory, they are based upon an unwritten code known as the "laws of war", and are not capable of exact definition. While these forms of military control can not be here covered at length and with completeness, yet the following is given for the purpose of serving as an outline of the underlying principles involved and as a guide to assist officers in the naval service who may be called upon to apply these forms of military control.

D-3. Distinction between military government and martial law.—In earlier times no distinction was drawn between military government and martial law, and even today it is not uncommon to find some confusion in the indiscriminate use of these terms. However, since the recognition of this distinction in the Supreme Court practically all authorities distinguish the two terms. It is therefore, necessary to an understanding of the subject to have this distinction clearly in mind. To this end the following is quoted from Winthrop, page 1245:

(1) 4 Wallace (U. S.) 2.

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Military government, as the term is here employed, is thus a government exercised over the belligerent or other inhabitants of an enemy's country in war, foreign or civil; *martial law* over our own immediate fellow citizens, who, though perhaps disaffected or in sympathy with the public enemy, are not themselves belligerents, or legally, enemies. The *occasion* of military government is war; the occasion of martial law is simply public exigency, which, though more commonly growing out of pending war, may yet present itself in time of peace. The *field* of military government is enemy's country; the field of martial law our own country or such portion of it as is involved in the exigency. Military government is further distinguished from martial law in that, unlike the latter as commonly instituted, it calls for no formal proclamation or declaration of its inauguration, but exists simply as a consequence of hostile occupation. A proclamation or public notice to the inhabitants, informing them of the extent of the occupation and of the powers proposed to be exercised, is a customary measure, but one not essential to the initiation of the status or jurisdiction.

D-4. Military government is military power exercised by a belligerent, by virtue of his occupation of an enemy's territory, over such territory and its inhabitants.—This applies not only to the occupied territory of a foreign enemy in war but likewise to the territory of the United States in cases of insurrection and rebellion of such magnitude that the rebels are treated as belligerents. Quoting from Davis, page 300—

It [military government] applies to territory over which the Constitution and laws of the United States have no operation and in which the guarantees which are contained in that instrument are entirely inoperative. Its exercise is sanctioned because all powers of sovereignty have passed into the hands of the commanding general of the occupying forces and the local authority is unable to maintain order and protect life and property in the immediate theater of military operations and the duty of such protection passes with the permanent or temporary transfer of sovereign power and authority to the occupying belligerent. In this case the mere fact of hostile occupation of the territory of the enemy constitutes notice to the inhabitants of the existence of the government by military occupation.

D-5. Same: Authority for.—It follows that the authority for military government lies in the mere fact of occupation. However, it is to be noted in connection with this form of government that while, as defined above, it is designed principally to meet the conditions arising during a state of war, it may none the less be applied to a peaceful possession, as, for example, the present government of Guam, for the essential feature of this government is that it be actually exercised over a country in full possession, and as such it may continue without the inhabitants of such country being necessarily characterized as enemies. Yet the necessity for military government arises primarily from a state of war or a state approaching war, and is founded upon the laws of war, and ordinarily is administered only in the conduct thereof or pursuant thereto. For this reason it is customary for writers on the subject to refer to a state of belligerency as a condition precedent to its function. It is likewise to be noted that while such writers frequently confine their comments on this form of government to a contemplation of its exercise by the Army, such comments apply with equal force to its exercise by the Navy.

D-6. Same: Function of.—As to its function, according to Winthrop (2), military government founded on actual occupation "is an exercise of sovereignty, and as such dominates the country which is its theater in all the branches of administration. Whether administered by officers of the army of the belligerent,

or by civilians left in office or appointed by him (the military commander) for the purpose, it is the government of and for all the inhabitants, native or foreign, wholly superseding the local law and civil authority except in so far as the same may be permitted by him to subsist. Civil functionaries who are retained will be protected in the exercise of their duties. The local laws and ordinances may be left in force, and in general should be, subject, however, to their being in whole or in part suspended and others substituted in their stead, in the discretion of the governing authority."

D-7. Same: Exercise of.—As to the exercise of authority and functions of military government it was stated by the Supreme Court (3) that it is "exercised by the military commander under the direction of the President, with the express or implied sanction of Congress." Commenting upon this statement Winthrop (4) says:

"Congress having, under its constitutional powers, declared or otherwise initiated the state of war, and made proper provision for its carrying on, the efficient prosecution of hostilities is devolved upon the President as Commander-in-Chief. In this capacity, unless Congress shall specially otherwise provide, it will become his right and duty to exercise military government over such portion of the country of the enemy as may pass into the possession of his army by the right of conquest. In such government the President represents the sovereignty of the nation, but as he can not administer all the details, he delegates, expressly or impliedly, to the commanders of armies under him the requisite authority for the purpose. Thus authorized, these commanders may legally do whatever the President might himself do if personally present, and in their proceedings and orders are presumed to act by the President's direction or sanction." As to the extent of the power thus conferred (quoting further): "The power of military government thus vested in the President or his military subordinates is a large and extraordinary one, being subject only to such conditions and restrictions as the law of war, in defining the particulars to which it may extend, imposes upon the scope of its exercise. As it is expressed by the Supreme Court, the governing authority 'may do anything necessary to strengthen itself and weaken the enemy. There is no limit to the powers that may be exerted in such cases save those which are found in the laws and usages of war.' (*New Orleans v. Steamship Co.*, 20 Wall. 387.)" But this broad statement is not without qualification, as will be seen by the following: "While his (the military governor's) power is necessarily despotic, this must be understood rather in an administrative than in a legislative sense. While in legislating for a conquered country he may disregard the laws of that country, he is not wholly above the laws of his own. * * * His power to administer would be absolute, but his power to legislate would not be without certain restrictions—in other words, they would not extend beyond the necessities of the case" (5). "The title by conquest is acquired and maintained by force. The conqueror prescribes its limits. Humanity, however, acting on public opinion, has established as a general rule that the conquered shall not be wantonly oppressed, and that their condition shall remain as eligible as is compatible with the objects of the conquest" (6). The result, then, is that the declared will of the military commander, tempered by his instructions, and

(3) *Ex parte Milligan*, 4 Wallace (U. S.) 2.

(4) P. 1248.

(5) *Dooley v. U. S.*, 182 U. S. 222.

(6) *Johnson v. McIntosh*, 8 Wheat. (U. S.) 543.

by the humane sentiment of the times, and also by the established practice of civilized warfare, must be regarded as having the force of law within the occupied territory (7).

D-8. Military governor.—A military governor is a representative of his country and should be guided in his actions by its foreign policy, the sense of justice inherent in its people, and the principles of justice as recognized by civilized nations. A single misuse of power, even in a matter that seems of little importance, may imperil his fame and injure his country and its citizens. Foreign official, commercial, and social relations depend in great measure upon the friendliness of other countries and their people. Acts of injustice by a military commander jeopardize this friendliness, especially in neighboring countries, or in those whose people have racial or other ties in common with the people of the occupied country.

D-9. Martial law.—Martial law is military power exercised in time of war, insurrection, or rebellion in parts of the country retaining their allegiance, and over persons and things not ordinarily subjected to it. That is, it is the law exercised by the commander of armed forces of a State which have occupied certain territory of such State because by reason of some public exigency the due operation of ordinary law in such territory has been obstructed to such extent that life, property, and other rightful enjoyments of the inhabitants can not be protected thereby. In regard to the extent of the jurisdiction and power of martial law there is some difference of opinion among authorities and conflict in the decisions of courts. The following statement, however, as to the limitations of this form of law, is believed to be a safe guide:

The employment of martial law has been likened to the exercise of the right of *self-defense* by an individual. Its occasion and justification thus is necessity. But though in general without other limit than the discretion of the commander upon whom its execution is devolved, it is not an absolute power, but one to be exercised with such stringency only as circumstances may require. * * * Martial law is indeed resorted to as much for the protection of the lives and property of peaceable individuals as for the repression of hostile or violent elements. It may become requisite that it supersede for the time the existing civil institutions, but, in general, except in so far as relates to persons violating military orders or regulations, or otherwise interfering with the exercise of military authority, martial law does not in effect suspend the local law or jurisdiction or materially restrict the liberty of the citizen (8).

Thus the military commander of forces occupying territory under martial law is not a military governor of such territory. Such military commander should, however, use such force as may be necessary to maintain order and protect persons and property from violence.

Further than this he should not interfere with persons or property rights. But so long as martial law obtains, the inhabitants of the territory to which it applies must look to the military forces for protection.

To this end the military commander may, if the civil courts are not able to punish these offenses adequately, promptly, and with certainty, try by military tribunals offenders against the peace and military authority. But he may not go beyond the necessities of the case and attempt to usurp the full legislative, executive, and judicial powers over the territory under his control. The circumstances and imperative necessities of the case may justify actions which would not be proper otherwise.

D-10. Exercise of military government and martial law by the Navy.—Generally, it may be said that while both military government and martial law

(7) Stockton's Manual of International Law, p. 203.

(8) Winthrop, p. 1279.

derive their sanction from the laws of war, this code is adopted by the former to a greater extent than by the latter. Both are resorted to by reason of the needs of the occasion; the former status arising from a foreign occupancy, the latter from a domestic necessity. As to the application of these principles by naval authority, the normal situation requiring it would be that arising from the occupation of a foreign port and its contiguous territory by naval forces, thus making it necessary for the commander to institute military government. It may happen, if the distinction set forth in this chapter is not observed, that a military commander will be exercising all the functions of military government and yet refer to the existing status as one of martial law. As has been seen, military government is a question of fact, and the important thing is that it actually be established. Its prerogatives and functions then naturally follow, irrespective of the term which may be used to refer to the exercise of this power. The terms *military government* and *martial law* merely describe states of affairs which are sanctioned by the unwritten law, and are not terms of the written law on which states of affairs are predicated. The controlling factor is what the state of affairs happens to be, not what it is called. The use of the proper descriptive term tends to clarity, an inaccurate description leads to confusion; the actual operation is the same. Likewise, in the matter of a proclamation declaring the establishment of a form of military control, the important thing is to set forth the state of affairs which exists, to define the district or territory to which the proclamation applies, to state the extent to which the civil administration will be affected, the manner in which it is desired that the inhabitants conduct themselves, the measures which will be resorted to—in short, the proclamation should be illuminative of existing conditions and of the will of the declaring power. While the conditions which might call for such proclamation are varied and in each case the particular circumstances must control, the following is given as a guide for cases in which it is desired to announce the establishment of military government in an occupied port and its contiguous territory:

D-11. Same: Proclamation.—

PROCLAMATION

The United States naval forces under my command have occupied the city of ———, ———. I therefore proclaim that in accordance with the laws of nations and the usages, customs, and functions of my own and other Governments, I am vested with the power and responsibility of government in all its functions throughout the city of ——— and the territory contiguous thereto, now occupied by the forces under my command, and such additional territory as may be hereafter occupied by such forces.

It is intended that civil affairs be administered by the existing local government so long as peace and good order are maintained in the city. To this end all the municipal and other civil employees are requested to continue in their present vocations, without change, and the administration of civil functions and justice will continue through the usual offices and courts existing in the country, except in so far as relates to persons violating military orders or otherwise interfering with the exercise of military authority, in cases affecting the military forces of the United States, and in political cases.

All peaceful citizens can confidently pursue their usual occupations, feeling that, so long as they continue so to act, they will be protected in their persons, property, and private rights and relations. Offenses against the forces of the United States and in violation of the military orders or regulations or in interference with the exercise of military authority will be punished in accordance with the unwritten code which is known as the laws of war. For this purpose all offenders in the matters aforesaid shall be promptly

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seized, confined, and reported for trial by military commissions or provost courts, as the case may be, which will be appointed and conducted in accordance with the laws of war and the rules and regulations of the Government of the United States relating thereto.

The commanding officer of the forces of the United States will from time to time issue rules for the guidance of inhabitants, and will issue the necessary regulations and appoint the necessary officers for the proper administration of government.

Done at the city of ———, ———, this ——— day of ———, 19—.

C ——— D ———,

Rear Admiral, United States Navy.

Commanding United States Forces Occupying ———

D-12. Exceptional military courts.—Since a naval court martial is a court of limited jurisdiction restricted by law to the trial of those persons enumerated in section 333, Naval Courts and Boards, it is apparent that, in order to exercise the power conferred upon the Naval Establishment when its duty is such as to place under it a wider jurisdiction in accordance with the principles of this chapter, it is necessary to employ tribunals other than those considered in the foregoing chapters in connection with the administration of naval law. Such tribunals have been referred to by the Navy Department as *exceptional military courts*, and include the *military commission*, the *superior provost court*, and the *provost court*.

D-13. Same: Sanction and procedure.—These exceptional military courts, unlike the court martial, derive their sanction from the laws of war and not from the enactments of Congress. The constitution and procedure of such courts may be, but is not now, prescribed by statute. Nor does any law limit the sentence which may be adjudged by such courts. The offense, which may be either a civil crime or violation of the laws of war or orders of military authority, may be charged by merely setting forth a designation of the offense in cases of minor offenses triable by provost court; but, in the cases of the more serious offenses triable by superior provost court and military commission, there should be a detailed specification as in court-martial practice, and such specification should show on its face the circumstances conferring jurisdiction, as, for example, that the offender was an inhabitant of a district under military government. Specifications should in all cases be preferred and signed by the convening authority.

D-14. Conduct of exceptional military courts when held by naval authority.—When exceptional military trials, whether by military commissions or provost courts, are held by naval authority, the commission or court conducting such trials shall be constituted and organized and shall conduct its proceedings in the manner provided for naval courts martial or deck courts, so far as the exigencies of the service may permit. Similarly, records shall be kept of the proceedings, which upon completion shall be transmitted to the Judge Advocate General of the Navy to be revised and recorded. No sentence of death shall be carried into execution until confirmed by the Secretary of the Navy; all other sentences may be executed upon approval of the convening authority. The jurisdiction of every such commission or provost court in the matter of the punishments which it may adjudge shall be limited in the discretion of the convening authority and shall be expressly stated in his order convening such commission or provost court.

Supplementary to the above and subject to the remark that the military commander of occupying forces is, by the laws of war, charged with the administration of the occupied territory, and is, therefore, not to be unduly re-

stricted in the measures to be employed in such administration, the following shall be observed as a guide, in so far as circumstances permit, in respect to the above-mentioned military courts:

D-15. Military commission.—A military commission should, in general, correspond to a general court martial both as to its constitution and as to its proceedings. If consisting of less than five members the convening order should specifically state that no other officers can be summoned without serious prejudice to military interests.

Except in a case where the convening authority may, for military reasons, direct otherwise, all evidence taken before such commission shall be recorded as in general courts martial. A military commission should be limited in the punishments which it may adjudge only to such an extent as the convening authority may deem proper.

D-16. Superior provost court.—A superior provost court should, in general, correspond to a summary court martial both as to its constitution and as to its proceedings. Except where the convening authority may, for military reasons, direct otherwise, evidence introduced before such court shall be recorded. A superior provost court ordinarily should not be granted authority to impose sentences involving confinement for more than five years nor fines of more than \$3,000.

D-17. Provost court.—A provost court should, in general, correspond to a deck court both as to its constitution and as to its proceedings. Evidence taken before such court need not ordinarily be recorded. A provost court ordinarily should not be granted authority to impose sentences involving confinement for more than six months nor fines of more than \$300.

D-18. Convening authority of exceptional military courts.—The authority to convene the above-mentioned exceptional military courts vests only in the military commander, or in case there is a military governor, then in the military governor of an occupied territory, and all such courts may be ordered only in the name of such commander or governor. When a military commander or governor desires to authorize an officer under his command to convene any of the above courts he may delegate such authority to a subordinate, but the latter may so act only as a representative and in the name of the military commander or governor. When so acting, such subordinate officer may, subject to any action in remission or mitigation he may see fit to take, upon his own approval, put into immediate execution the sentences of such exceptional military courts as the military commander or governor has empowered him to convene. (Nothing herein shall be taken to modify the limitation prescribed in section D-14 in regard to the execution of a death sentence.) But in all cases the records of such courts shall be forwarded to the military commander or governor, who shall review all such records, and who may set aside the proceedings, or remit or mitigate, in whole or in part, the sentence imposed by any military commission, superior provost court, provost court, or other exceptional military court convened by his order or by that of his predecessor in command, or by that of any officer under his command or the predecessor of any such officer.

D-19. Restriction to the use of military courts.—In so far as practicable, the employment of exceptional military courts should, as a general rule, be restricted to the trial of offenses in breach of the peace, in violation of military orders or regulations, or otherwise in interference with the exercise of military authority.

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Inasmuch as the most frequent offenses are the minor offenses which should be tried by provost court, the following form is given to guide in such cases:

D-20. Precept for provost court.—

(Place and date.)

Captain A——— B———, U. S. Marine Corps, is hereby ordered as provost court for the district of —— (or otherwise describe the locality) for the trial of such of the inhabitants or sojourners herein, not including members of the military services of the United States (and other exceptions if desired), as may commit offenses not deemed to warrant punishment exceeding confinement, with or without hard labor, for thirty days and fines not exceeding \$100 (and any other restrictions upon the offenses coming under the jurisdiction of this court which may be desired).

All cases brought before this court which the court shall deem deserving of a greater punishment than that above prescribed shall be certified to the superior provost court for the district of —— and the offenders shall be ordered kept in confinement awaiting the action of such superior court (or shall be reported to the undersigned for other disposition of their cases).

Reports of cases tried and dispositions thereof shall be rendered daily to the undersigned.

C——— D———,
Rear Admiral, U. S. Navy,
Commanding U. S. Forces Occupying ——.

When the authority to convene such courts has been delegated to a subordinate the precept should so state. Thus the above should read:

In accordance with the authority delegated to me by Rear Admiral C——— D———, U. S. Navy, commanding the U. S. forces occupying ——, under date of ——, Captain A——— B———, U. S. Marine Corps, is hereby ordered, etc. * * *

D-21. Record of proceedings of provost court.—

RECORD OF PROCEEDINGS

(Place and date.)

Proceedings of Provost Court held for the district of ——, by the authority of (name and office of the convening authority), under date of ——.

The court met at 10 a. m.

E——— F——— was arraigned on the charge of ——, and pleaded as follows:

Witnesses for prosecution:

Witnesses for defense:

(Testimony of witnesses need not be recorded.)

Finding: Guilty. (Not guilty).

Sentence: Confinement for — days (with or without hard labor); or to be fined —— dollars; or confinement for — days and to be fined —— dollars.

A——— B———,
Captain, U. S. Marine Corps,
Provost Court.

G——— H——— was arraigned, etc.

The court adjourned at ——.

OATHS

E-1. Oaths—Authority to administer.—Oaths administered by officers of the naval service, to be given legal effect, must be administered only by those specifically authorized by law to administer them. Members of the naval service so authorized and the purposes for which they are authorized are indicated in the following subparagraphs:

(a) Judges advocate of naval general courts martial and courts of inquiry, and all commanders in chief of naval squadrons, commandants of navy yards and stations, officers commanding vessels of the Navy, and recruiting officers of the Navy, and the adjutant and inspector, assistants adjutant and inspector, commanding officers, recruiting officers of the Marine Corps, and such other officers of the regular Navy and Marine Corps, of the Naval Reserve, and of the Marine Corps Reserve, as may be hereafter designated by the Secretary of the Navy, are authorized to administer oaths for the purposes of the administration of naval justice and for other purposes of naval administration.

(b) In accordance with subparagraph (a) above, executive officers of all naval vessels and naval training stations, officers second in command of naval districts and captains of the yard at navy yards and stations, executive officers of fleet air bases, all officers on active duty in the Navy of or above the rank of commander, and all officers on active duty in the Marine Corps of or above the rank of lieutenant colonel, are authorized to administer oaths for the purpose of administration of naval justice and for other purposes of naval administration.

(c) In places beyond the continental limits of the United States where the Navy or Marine Corps is serving, such officers of the Navy or Marine Corps as are authorized to administer oaths for the purposes of the administration of naval justice and for other purposes of naval administration shall have the general powers of a notary public or of a consul of the United States in the administration of oaths, the execution and acknowledgment of legal instruments, the attestation of documents, and the performance of all other notarial acts.

(d) Any officer or clerk of any of the departments lawfully detailed to investigate frauds on, or attempts to defraud, the Government, or any irregularity or misconduct of any officer or agent of the United States, and any officer of the Army, Navy, Marine Corps, or Coast Guard, detailed to conduct an investigation, and the recorder, and if there be none the presiding officer, of any military, naval, or Coast Guard board appointed for such purpose, shall have authority to administer an oath to any witness attending to testify or depose in the course of such investigation. (5 U. S. Code 93.)

(e) Presidents of general courts martial and courts of inquiry are authorized to administer oaths to judges advocate of their respective courts and to wit-

nesses appearing to testify before such courts. Judges advocate are authorized to administer oaths to members, interpreters, and reporters of their respective courts.

(f) The senior member of a summary court martial is authorized to administer oaths to the recorder and to witnesses appearing to testify before such court. The recorder of a summary court martial is authorized to administer oaths to the members, interpreters, and reporters.

(g) Deck court officers while serving in such capacity shall have power to administer oaths in connection with such duty.

(h) Presidents of naval examining boards, boards of medical examiners, naval retiring boards, and naval selection boards are authorized to administer oaths to the recorder of their respective boards and to witnesses appearing to testify before examining and retiring boards. Recorders of such boards, if officers, are, in accordance with subparagraph (a) above, authorized to administer the prescribed oaths to the members thereof. A civilian recorder is not authorized to administer oaths.

E-2. Same: By chief clerks, inspectors, etc.—Chief clerks and inspectors attached to the office of inspectors of naval material, chief clerks attached to field services under the Naval Establishment and to navy yards, naval stations, and Marine Corps posts and stations, and such other clerks and employees attached to offices of inspectors of naval material, field services, naval stations, navy yards, and Marine Corps posts and stations, as may be designated by the Secretary of the Navy, are authorized to administer any oath required or authorized by any law of the United States, or regulation promulgated thereunder, relating to any claim against or application to the United States of officers and employees under the Naval Establishment; said persons so authorized to administer the aforesaid oaths are also authorized to administer oaths of office to officers and employees under the Naval Establishment, but no compensation or fee shall be demanded or accepted for administering any such oath or oaths.

E-3. Same: Administering of.—Forms of oaths or affirmations used by various naval courts and boards are given in section E-4 to E-12, inclusive. These forms will be used, where appropriate, and must be administered *in each case*, by one authorized to do so, to each member, judge advocate, recorder, reporter, interpreter, and witness. Failure to administer the prescribed oaths constitutes a fatal error. If, in fact, the oaths were duly taken, but the entry to that effect was omitted from the record, this error may be corrected in the following manner:

(1) If the court has not been dissolved, by proceedings in revision, or

(2) If the court has been dissolved, by affidavits of members of the court and the judge advocate setting forth the fact that the oaths were duly administered.

The point in the proceedings at which each of the various oaths is usually administered is shown in the respective chapters on procedure.

There is no especially provided procedure which must be used in administering an oath. Any procedure which appeals to the conscience of the person to whom the oath is administered and which binds him to speak the truth is sufficient. In addition to the prescribed oath there should be such additional ceremony or acts as will make the oath binding on the conscience of the person taking it. The usual manner of administering an oath is to require the person taking it to keep one hand upon a Bible while doing so. Persons who have

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peculiar forms which they recognize as obligatory and believers in other than the Christian religion may be sworn in their own manner, or according to the peculiar ceremonies of the religion which they profess and which they declare to be binding.

When the same court or board sits in more than one case the oaths must be administered anew in each case. While the members and judge advocate or recorder are being sworn all persons present will stand. While any others are being sworn, the person taking and the officer administering the oath will stand.

In a general court martial the judge advocate is sworn first and then the members. In a summary court martial the members are sworn first and then the recorder.

When practicable, officers and men of the Navy and Marine Corps who may be required to subscribe under oath to any papers relating to naval administration and the administration of naval justice, will do so in the presence of an officer of the service authorized to administer oaths. When there is no such officer available the provisions of article 1834, Navy Regulations apply. A limited number of form oaths covering matters other than those connected with naval courts and boards are given in section E-13 under the heading "Miscellaneous."

E-4. Same: Forms of: General court martial.—

(a) Oath for the judge advocate.—You, C—— B. A——, do swear (or affirm) that you will keep a true record of the evidence given to and the proceedings of this court; that you will not divulge or by any means disclose the sentence of the court until it shall have been approved by the proper authority; and that you will not at any time divulge or disclose the vote or opinion of any particular member of the court unless required so to do before a court of justice in due course of law.

(b) Oath for members.—You, A—— B. C——, D—— E. F——, * * * and U—— V. W——, do each and severally swear (or affirm) that you will truly try without prejudice or partiality, the case now depending, according to the evidence which shall come before the court, the rules for the government of the Navy, and your own conscience; that you will not by any means divulge or disclose the sentence of the court until it shall have been approved by the proper authority; that you will not at any time divulge or disclose the vote or opinion of any particular member of the court, unless required so to do before a court of justice in due course of law.

(c) Oath for reporter.—You, F—— E. D——, swear (or affirm) faithfully to perform the duty of reporter in aiding the judge advocate to take and record the proceedings of the court, either in shorthand or ordinary manuscript.

(d) Oath for interpreter.—You, A—— B——, swear (or affirm) faithfully and truly to interpret or translate in all cases in which you shall be required so to do between the United States and the accused.

(e) Oath for a witness.—You do solemnly swear (or affirm) that the evidence you shall give in the case now before this court shall be the truth, the whole truth, and nothing but the truth, and that you will state everything within your knowledge in relation to the charges. So help you God (or, this you do under the pains and penalties of perjury).

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(f) **Oath on voir dire.**—You, D——— E. F———, swear (or affirm) that you will true answers make to questions touching your competency as a member of the court (witness) in this case.

E-5. Same: Summary court martial.—

(a) **Oath for members.**—You, A——— R. K———, J——— M. D———, and J——— H. R———, do swear (or affirm) that you will well and truly try, without prejudice or partiality, the case now depending, according to the evidence which shall be adduced, the laws for the government of the Navy, and your own conscience.

(b) **Oath for recorder.**—You, A——— B———, swear (or affirm) that you will keep a true record of the evidence which shall be given before this court and of the proceedings thereof.

(c) **Oath for reporter.**—You, A——— B———, swear (or affirm) faithfully to perform the duties of reporter in aiding the recorder to take and record the proceedings of the court, either in shorthand or ordinary manuscript.

(d) **Oath for interpreter.**—You, A——— B———, swear (or affirm) faithfully and truly to interpret or translate in all cases in which you shall be required so to do between the United States and the accused.

(e) **Oath for witness.**—You do solemnly swear (or affirm) that the evidence you shall give in the case now before this court shall be the truth, the whole truth, and nothing but the truth, and that you will state everything within your knowledge in relation to the charges. So help you God (or, this you do under the pains and penalties of perjury).

(f) **Oath on voir dire.**—You, D——— E. F———, swear (or affirm) that you will true answers make to questions touching your competency as a member of the court (witness) in this case.

E-6. Same: Deck court.—

(a) **Oath for recorder.**—You, A——— B———, do swear (or affirm) that you will keep a true record of the evidence which shall be given before this court and of the proceedings thereof.

(b) **Oath for witness.**—You do solemnly swear (or affirm) that the evidence you shall give in the case now before this court shall be the truth, the whole truth, and nothing but the truth, and that you will state everything within your knowledge in relation to the charges. So help you God (or, this you do under the pains and penalties of perjury).

E-7. Same: Court of inquiry.—

(a) **Oath for members.**—You, A——— B. C———, D——— E. F———, and G——— H. I———, do swear (or affirm) well and truly to examine and inquire, according to the evidence, into the matter now before you, without partiality.

(b) **Oath for judge advocate.**—You, J——— K. L———, do swear (or affirm) truly to record the proceedings of this court and the evidence to be given in the case in hearing.

(c) **Oath for reporter.**—You, F——— E. D———, do swear (or affirm) faithfully to perform the duty of reporter in aiding the judge advocate to take and record the proceedings of the court, either in shorthand or in ordinary manuscript.

(d) **Oath for interpreter.**—You, A——— B———, swear (or affirm) faithfully and truly to interpret or translate in all cases in which you shall be required so to do between the United States and the party whose conduct is the subject of this inquiry (or in the matter under inquiry).

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(e) **Oath for witness.**—You do solemnly swear (or affirm) that the evidence you shall give in the case now before this court shall be the truth, the whole truth, and nothing but the truth, and that you will state everything within your knowledge in relation to the matter under inquiry, so help you God (or, this you do under the pains and penalties of perjury).

E-8. Same: Boards of investigation and investigations (when authorized).—

(a) **Oath for reporter.**—You, F—— E. D——, swear (or affirm) faithfully to perform the duty of reporter in taking and recording the proceedings of this investigation, either in shorthand or in ordinary manuscript.

(b) **Oath for interpreter.**—You, A—— B——, swear (or affirm) faithfully and truly to interpret or translate in all cases in which you shall be required so to do between the United States and the party whose conduct is the subject of this investigation (or, in the matter under investigation).

(c) **Oath for witness.**—You, A—— B——, do solemnly swear (or affirm) that the testimony you shall give in the matter of * * * now in hearing shall be the truth, the whole truth, and nothing but the truth, so help you God (or, this you do under the pains and penalties of perjury).

E-9. Same: Naval examining board.—

(a) **Oath for recorder.**—You, J—— K. L——, do solemnly swear (or affirm) that you will keep a true record of the proceedings of this board in the case of H—— E. C——, now before the board and about to be examined.

(b) **Oath for members.**—You, D—— E. F——, M—— N. O——, and G—— H. I——, and each of you do solemnly swear (or affirm) that you will honestly and impartially examine and report upon the case of H—— E. C——, now before the board and about to be examined.

(c) **Oath for witness.**—You, A—— B——, do solemnly swear (or affirm) that you will make true answers to such questions as may be put to you in the case of * * * now under examination by the board.

E-10. Same: Board of medical examiners.—

(a) **Oath for recorder.**—You, N—— M. L——, do solemnly swear (or affirm) that you will keep a true record of the proceedings of this board in the case of H—— E. C——, now before the board and about to be examined.

(b) **Oath for members.**—You, C—— B. A—— and F—— E. D——, and each of you do solemnly swear (or affirm) that you will honestly and impartially examine and report upon the case of H—— E. C——, now before the board and about to be examined.

E-11. Same: Naval retiring board.—

(a) **Oath for recorder.**—You, L—— M. N——, do solemnly swear (or affirm) that you will keep a true record of the proceedings of this board in the case of Q—— R. S——, now before the board and about to be examined.

(b) **Oath for members.**—You, A—— B. C——, D—— E. F——, R—— S. T——, and G—— H. K——, and each of you do solemnly swear (or affirm) that you will honestly and impartially examine and report upon the case of Q—— R. S——, now before the board and about to be examined.

(c) **Oath for witness.**—You, A—— B——, do solemnly swear (or affirm) that you will make true answers to such questions as may be put to you in the case of Q—— R. S——, now under examination by this board.

E-12. Same: Selection board.—

(a) **Oath for recorder.**—You, A—— D. B——, do solemnly swear (or affirm) that you will keep a true record of the proceedings of this board.

APPENDIX E

(b) Oath for members, Staff Corps.—(Administered by recorder.) You, and each of you, do solemnly swear (or affirm) that you will, without prejudice or partiality, and having in view solely the special fitness of officers and the efficiency of the naval service, perform the duties imposed upon you as provided by law.

(c) Oath for members, Line.—(Administered by recorder.) You, and each of you, do solemnly swear (or affirm) that you will, without prejudice or partiality, and having in view both the special fitness of officers and the efficiency of the naval service, perform the duties imposed upon you as provided by law.

E-13. Same: Miscellaneous.—

(a) Oath of office.—Having been appointed a _____ in the United States _____ (Naval Reserve) I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter: So help me God.

(Signature)

ss.

Subscribed and sworn to before me this _____ day of _____, 19____

(SEAL)

(b) Oath for Navy mail clerk.—I, _____, having been designated by the Post Office Department as _____ Navy mail clerk, do solemnly swear (_____) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter: So help me God. I do further solemnly swear (_____) that I will faithfully perform all the duties required of me and abstain from anything forbidden by the laws in relation to the establishment of post offices and post roads within the United States; and that I will honestly and truly account for and pay over any money belonging to the said United States which may come into my possession or control: So help me God.

(Signature)

Sworn to and subscribed before me this _____ day of _____, A. D., 19____

[SEAL OF SHIP]

[OR STATION]

Commanding _____

(Ship or station)

(c) Oath for members, Line.—(Administered by recorder.) You, and each of you, do solemnly swear (or affirm) that you will, without prejudice or partiality, and having in view both the special fitness of officers and the efficiency of the naval service, perform the duties imposed upon you as provided by law.

OATHS

Sworn to and subscribed before me this ____ day of _____, A. D.,
19_____.

[SEAL]

Commanding _____

(Ship or station)

(d) Oath for a deposing witness.—You do solemnly swear (or affirm) that
you will make true answers to the following interrogatories and cross-inter-
rogatories to be propounded to you in the case of United States v. A-----
B-----.

APPENDIX F

FORMS

F-1. Introductory.—The forms shown in this appendix are those which are not embodied in the record of a court or board, these latter being given in the respective chapters on procedure. (The interrogatories and deposition shown in this appendix are embodied in the record of the court or board. The form for them is given here because of their general application.)

Most of the forms given herein are drawn as for a general court martial. They are drawn similarly for other courts or boards before which they may be used.

F-2. Letter recommending trial by general court martial.—

File ———.

U. S. S. COLORADO,
SAN DIEGO, CALIF.,
October 6, 19—.

From: The Commanding Officer.

To: Commander Battleships, Battle Force, U. S. Fleet.

Subject: Recommend trial by general court martial in the case of X——— Y.
Z———, seaman second class, U. S. Navy, U. S. S. Colorado.

- Enclosures: (10) (A) Statement of X——— Y. Z———, seaman second class, U. S. Navy.
(B) Statement of Lieutenant (j. g.) J——— T. T———, U. S. Navy, officer of the deck.
(C) Statement of J——— K. W———, boatswain's mate first class, U. S. Navy.
(D) Statement of Boatswain C——— A. L———. U. S. Navy.
(E) Statement of E——— Y———, sergeant, U. S. Marine Corps.
(F) Statement of H——— F. G———, chief boatswain's mate, U. S. Navy.
(G) Statement of A——— J. R———, ship's cook third class, U. S. Navy.
(H) Statement of Lieutenant Commander J——— B. C———, Medical Corps, U. S. Navy.
(I) Certified transcript of service record and statement of pay account of X——— Y. Z———, seaman second class, U. S. Navy.
(J) Specimen charges and specifications.

1. It is recommended that X——— Y. Z———, seaman second class, U. S. Navy, be brought to trial before a general court martial on the following charges: Breaking arrest—one specification; stealing property of the United States intended for the naval service thereof—six specifications; * * *.

APPENDIX F

2. From the investigation which I have made I believe the following to be the facts: (Here set out a concise but complete statement of the facts.)

F-3. Same: Endorsement of, by convening authority to the judge advocate.—(2)

First endorsement

File——.

UNITED STATES FLEET
BATTLESHIPS, BATTLE FORCE
U. S. S. WEST VIRGINIA, FLAGSHIP

SAN DIEGO, CALIF.,
October 13, 19—.

From: Commander Battleships, Battle Force.

To: First Lieutenant C—— D. E——, U. S. M. C., judge advocate, general court martial, U. S. S. *Colorado*.

Subject: Trial by general court martial of X—— Y. Z——, seaman second class, U. S. Navy.

1. Referred for your information in connection with the trial of the above-named man. Upon completion of the trial, return all papers.

2. This man is now on board the U. S. S. *Colorado*.

I——H. G——.

F-4. Same: Endorsement of, by the judge advocate returning the papers.—

Second endorsement

U. S. S. COLORADO,
SAN FRANCISCO, CALIF.,
November 14, 19—.

From: Captain C—— B. A——, U. S. Marine Corps, judge advocate, general court martial, U. S. S. *Colorado*.

To: The Commander Battleships, Battle Force, U. S. Fleet.

1. Returned, the trial of the above-named man having been completed.

C—— B. A——.

F-5. Letter transmitting copy of charges and specifications to the commanding officer of the accused.—(3)

File ——.

UNITED STATES FLEET
BATTLESHIPS, BATTLE FORCE
U. S. S. WEST VIRGINIA, FLAGSHIP

SAN DIEGO, CALIF.,
October 13, 19—.

From: Commander Battleships, Battle Force.

To: Commanding Officer, U. S. S. *Colorado*.

Subject: Trial of X—— Y. Z——, seaman second class, U. S. Navy, by the general court martial of which the president is Captain A—— B. C——, U. S. Navy.

Enclosure: 1.

1. There is transmitted herewith certified copy of charge, with specification, for delivery to the accused in this case, with notice that he will be tried before the above-mentioned general court martial.

(2) These papers should be forwarded with the original of the charges and specifications.

(3) Where the accused is an officer use the form given in the next section.

FORMS

2. The judge advocate of the court has been directed to summon such witnesses as may be required for the defense.

I—— H. G——.

F-6. Same: Where the accused is an officer.—

File ——.

UNITED STATES FLEET
BATTLESHIPS, BATTLE FORCE
U. S. S. WEST VIRGINIA, FLAGSHIP

SAN DIEGO, CALIF.,
October 13, 19—.

From: Commander Battleships, Battle Force.

To: Commanding Officer, U. S. S. *Colorado*.

Subject: Trial by general court martial of Lieutenant X—— Y. Z——,

U. S. Navy.

Enclosure: 1.

1. You will deliver the enclosed copy of charge(s) and specification(s) to Lieutenant X—— Y. Z——, place him under arrest in conformity with article 44 of the Articles for the Government of the Navy, and direct him to report to Captain A—— B. C—— at the time designated for his trial before the general court martial of which that officer is president.

I—— H. G——.

F-7. Letter to commanding officer directing him to furnish clerical assistance.—

File ——.

UNITED STATES FLEET
BATTLESHIPS, BATTLE FORCE
U. S. S. WEST VIRGINIA, FLAGSHIP

SAN PEDRO, CALIF.
October 29, 19—.

From: Commander Battleships, Battle Force.

To: The Commanding Officer, U. S. S. *Colorado*.

Subject: General court martial, detail of clerical assistance.

1. A general court martial, of which Captain A—— B. C——, U. S. Navy, is president (4), has been ordered to convene on board the U. S. S. *Colorado*, at 10 o'clock a. m., November 2, 19—.

2. You will detail from among the enlisted force under your command such clerical assistance as may be required by the judge advocate in recording the proceedings of the court.

I—— H. G——.

(4) Variation.—“* * * of which you are president, * * *.”

APPENDIX F

F-8. Modification to precept: Letter authorizing court to take up cases pending before another court.
File _____.

UNITED STATES FLEET
BATTLESHIPS, BATTLE FORCE
U. S. S. WEST VIRGINIA, FLAGSHIP

SAN DIEGO, CALIF.
October 29, 19—.

From: Commander Battleships, Battle Force.

To: Captain A—— B. C——, U. S. Navy, U. S. S. *Colorado*.

Subject: Authorizing general court martial to take up cases pending before court convened by precept of August 9, 19—.

1. The general court martial of which you are president, appointed by my precept of this date to convene on board the U. S. S. *Colorado*, is hereby authorized and directed to take up such cases, if any, as may be pending on the date of convening before the general court martial appointed by my precept of August 9, 19—, of which Captain B—— C. D——, U. S. Navy, is president and First Lieutenant C—— D. E——, U. S. Marine Corps, is judge advocate, except such cases the trial of which may have begun.

2. A copy of this letter will be attached to all cases referred to the court prior to date of precept transmitted herewith.

(signed) I—— H. G——,
Vice Admiral, U. S. Navy,
Commander Battleships, Battle Force,
U. S. Fleet.

A true copy. Attest:

C—— B. A——,
Captain, U. S. Marine Corps,
Judge Advocate.

F-9. Request for courtroom, and for provost marshal, guard, and orderlies.—

U. S. S. COLORADO,
NAVY YARD, MARE ISLAND, CALIF.,
December 2, 19—.

From: Lieutenant T—— L. G——, U. S. Navy, judge advocate, general court martial.

To: Commandant, via commanding officer.

Subject: Request for courtroom and for detail of provost marshal, guard, and orderlies for general court martial.

1. Having been appointed judge advocate of a general court martial, ordered to convene at the navy yard under your command at 10 o'clock a. m., on Monday, December 5, 19—, I respectfully request that a suitable place be assigned for the sessions of the court and that a provost marshal and the necessary guard and orderlies be detailed.

T—— L. G——.

FORMS

F-10. Report of delay in trial.—

U. S. S. COLORADO,

SAN FRANCISCO, CALIF.,

November 14, 19—.

From: Captain C—— B. A——, U. S. Marine Corps, judge advocate, general court martial, U. S. S. *Colorado*.

To: The Commander Battleships, Battle Force, U. S. Fleet. (Convening authority).

Subject: Report of delay in trial of X—— Y. Z——, seaman second class, U. S. Navy.

Reference: (a) Naval courts and boards, section 354.

1. In accordance with reference (a) I have to report that X—— Y. Z——, seaman second class, U. S. Navy, has not yet been brought to trial because the court has been engaged each day on cases referred to it prior to that of Z——.

2. I anticipate that the trial of Z—— will commence this week.

C—— B. A——.

F-11. Summons for naval witness.—

U. S. COLORADO,

San Francisco, Calif.,

November 5, 19—.

From: Captain C—— B. A——, U. S. Marine Corps, judge advocate, general court martial.

To: C—— S——, coxswain, U. S. Navy, U. S. S. *Arizona*, navy yard, Mare Island, Calif.

Via: Commanding Officer, U. S. S. *Arizona*.

Subject: Summons as a witness before a general court martial.

You are hereby summoned to appear before a general court martial on board the U. S. S. *Colorado*, at San Francisco, California, at 10 o'clock a. m., November 7, 19—, as a witness for the prosecution (defense) in the case of Lieutenant X—— Y. Z—— U. S. Navy.

C—— B. A——.

APPENDIX F

F-12. Subpoena for civilian witness.—

Naval General Court Martial of the United States, U. S. S. *Colorado*, San Francisco, Calif.

UNITED STATES	}	Subpoena.
v.		
LIEUTENANT X—— Y. Z——, U. S. NAVY		

The President of the United States to J—— B. S——:

You are commanded to appear as a witness for the defense, at 10 o'clock a. m., November 7, 19—, before a general court martial of the United States, convened on board the U. S. S. *California* at San Francisco, California, by an order of the Commander Battleships, Battle Force, United States Fleet, dated October 29, 19—.

And herein fail not under penalty of five hundred dollars fine or imprisonment for six months, or both.

Bring with you this precept, and depart not the court without leave. (5)

Witness: Captain A—— B. C——, U. S. Navy, president of the said court, this 5th day of November, 19—.

C—— B. A——,
Captain, U. S. Marine Corps,
Judge Advocate.

F-13. Summons duces tecum for naval witness.—

U. S. S. COLORADO,
San Francisco, Calif.,
November 5, 19—.

From: Captain C—— B. A——, U. S. Marine Corps, judge advocate, general court martial.

To: Lieutenant H—— H. J——, U. S. Navy, U. S. S. *Arizona*, navy yard, Mare Island, Calif.

Via: Commanding Officer, U. S. S. *Arizona*.

Subject: Summons as witness before a general court martial, with instructions to bring before the court certain described documents.

1. You are hereby summoned to appear before a general court martial, on board the U. S. S. *Colorado* at San Francisco, California, at 10 o'clock a. m., November 7, 19—, as a witness for the prosecution (defense) in the case of Lieutenant X—— Y. Z——, U. S. Navy.

2. You will also bring with you the following described documents: (Describe them.)

C—— B. A——.

(5) *Variation*.—(In the case of a civilian witness residing outside the State, Territory, or district where the court is held, or whose appearance is desired before a court or board other than a general court martial or court of inquiry.) "You are hereby requested to appear as a witness for the defense, at 10 o'clock a. m., November 7, 19—, before a naval general court martial of the United States convened on board the U. S. S. *Colorado* at San Francisco, California, by an order of * * * (Or, before a summary court martial, etc., or as the case may be.)

"Witness: Captain A—— B. C——, U. S. Navy, president of the said court, this 5th day of November, 19—.

"C—— B. A——,
"Captain, U. S. Marine Corps,
"Judge Advocate."

FORMS

F-14. Subpoena duces tecum for civilian witness.—

Naval General Court Martial of the United States, U. S. S. *Colorado*,
San Francisco, Calif.

UNITED STATES		} Subpoena.
v.		
LIEUTENANT X——	Y. Z——, U. S. Navy	

The President of the United States to J—— B. S——:

You are hereby commanded to appear as a witness for the prosecution, at 10 o'clock a. m., November 7, 19—, before a naval general court martial of the United States, convened on board the U. S. S. *Colorado* at San Francisco, California, by an order of the Commander Battleships, Battle Force, United States Fleet, dated October 29, 19—, and bring with you the following-described documents: (Here describe them.)

And herein fail not under penalty of five hundred dollars fine or imprisonment for six months, or both.

Bring with you this precept, and depart not the court without leave.

Witness: Captain A—— B. C——, U. S. Navy, president of the said court, this 5th day of November 19—.

C—— B. A——,
Captain, U. S. Marine Corps,
Judge Advocate.

F-15. Subpena for taking deposition of a civilian witness.—

Naval General Court Martial of the United States, U. S. S. *Colorado*, San Francisco, Calif.

UNITED STATES		} Subpoena.
v.		
LIEUTENANT X——	Y. Z——, U. S. NAVY	

The President of the United States to J—— B. S——:

You are hereby commanded to appear as a witness for the prosecution (defense) on November 6, 19—, at — o'clock —. m., before ——, de-
tailed to take your deposition for use before a naval general court martial of the United States, convened on board the U. S. S. *Colorado*, by an order of the Com-
mander Battleships, Battle Force, United States Fleet, dated October 29, 19—.

And herein fail not under penalty of five hundred dollars fine or imprisonment for six months, or both.

Bring with you this precept, and depart not without leave.

Witness: Captain A—— B. C——, U. S. Navy, president of the said court, this 5th day of November, 19—.

C—— B. A——,
Captain, U. S. Marine Corps,
Judge Advocate.

APPENDIX F

F-16. Letter directing the taking of depositions.—

File ———.

OFFICE OF THE COMMANDANT, 12TH NAVAL DISTRICT,
San Francisco, Calif.,
November 5, 19—.

From: The Commandant 12th Naval District.

To: Lieutenant T—— A. D——, U. S. Navy, U. S. naval recruiting station,
Sacramento, Calif.

Subject: Designation to take depositions.

Inclosures: Subpenas and interrogatories to be used in taking depositions to be
used in the case of Lieutenant X—— Y. Z——, U. S. Navy.

1. You are hereby authorized and directed to serve the subpoenas and propound the interrogatories forwarded herewith.

2. You will take the deposition required at the earliest practicable date and you will notify the judge advocate of the general court martial on board the U. S. S. *Colorado* at San Francisco, California, as to the probable date on which he may expect to receive this testimony.

3. Upon completion of the said depositions, forward the same direct to the judge advocate of the general court martial on board the U. S. S. *Colorado*.

J—— P. J——.

F-17. Interrogatories and deposition.—

Interrogatories

UNITED STATES

v.

LIEUTENANT X—— Y. Z——, U. S. NAVY

The following interrogatories and cross-interrogatories to be propounded under article 68 of the Articles for the Government of the Navy (34 U. S. Code 1200, art. 68), to J—— B. S——, residing at Sacramento, California, a witness for the prosecution (defense) in the above-entitled case now pending and to be tried before the general court martial convened by an order of the Commander Battleships, Battle Force, United States Fleet, dated October 29, 19—, are accepted by the court in open session, the defense (prosecution) having been given reasonable opportunity to submit cross-interrogatories (or are agreed upon by both parties in advance of the assembling of the court and subject to exceptions when read in court), and are respectfully forwarded to the Commandant of the Twelfth Naval District with the request that some suitable officer may be designated to take, or cause to be taken, the deposition of the said witness thereon:

First interrogatory: Are you in the United States Navy? If yes, what is your full name, rank, and vessel or station? If no, what is your full name, occupation, and residence?

Second interrogatory: Do you know the accused? If yes, how long have you known him?

Third interrogatory: * * *?

Etc.

First cross-interrogatory: * * *?

Etc.

First interrogatory by the court: * * *?

Etc.

FORMS

Dated on board the U. S. S. *Colorado* at San Francisco, California, November 4, 19—.

A—— B. C——,
Captain, U. S. Navy
President of the Court.

C—— B. A——,
Captain, U. S. Marine Corps,
Judge Advocate.

(Or, if taken in advance of the assembling of the court, the signatures should be those of the judge advocate and the accused, thus:)

C—— B. A——,
Captain, U. S. Marine Corps,
Judge Advocate.

X—— Y. Z——,
Lieutenant, U. S. Navy.

Deposition

J—— B. S——, the witness above named, having been first duly sworn by me, Lieutenant T—— A. D——, U. S. Navy, in charge of U. S. naval recruiting station, Sacramento, California, doth depose and say for full answers to the foregoing interrogatories, as follows:

To the first interrogatory: * * *

Etc.

J—— B. S——.

Subscribed and sworn to before me this 8th day of November 19—.

T—— A. D——,
Lieutenant, U. S. Navy,
in charge of U. S. naval recruiting station,
Sacramento, California.

F-18. Return of service on a subpoena.—

UNITED STATES
v.
LIEUTENANT X—— Y. Z——, U. S. NAVY }

U. S. S. COLORADO,
SAN FRANCISCO, CALIF.,
November 7, 19—.

I certify that I made service of the within subpoena on J—— B. S——, the witness named therein, by personally delivering to him a duplicate of the same at (address), on the 5th day of November 19—.

B—— R. G——,
Lieutenant, U. S. Navy,
Provost Marshal, General Court Martial.

(Or other person, as the case may be.)

----- } ss:
----- }

(State and county, or navy yard, etc., where affidavit is taken.)

B—— R. G——, being duly sworn, on his oath states that the foregoing certificate is true.

B—— R. G——.

Subscribed and sworn to this 7th day of November 19—, before me.

C—— B. A——
Captain, U. S. Marine Corps,
Judge Advocate.

(Or other officer, giving title, before whom affidavit is made.)

APPENDIX F

F-19. Warrant of attachment.—

Naval General Court Martial of the United States U. S. S. *Colorado*, San Francisco, Calif.

	UNITED STATES	}
	v.	
LIEUTENANT X———	Y. Z———, U. S. NAVY	

The President of the United States to Lieut. B——— R. G———, U. S. Navy, provost marshal for said court:

Whereas J——— B. S———, of Sacramento, California, was on the 5th day of November 19—, at Sacramento, California, duly subpoenaed to appear and attend at San Francisco, California, on the 7th day of November 19—, at 10 o'clock a. m., before a naval general court martial of the United States, duly convened by an order of the Commander Battleships Battle Force, United States Fleet, dated October 29, 19—, to testify on the part of the prosecution (defense) in the above-entitled case:

And whereas he has wilfully neglected, refused, and failed to appear and attend (or, and to produce documentary evidence which he was legally subpoenaed to produce) before said general court martial as by said subpoena required.

And whereas he is a necessary and material witness on behalf of the prosecution (defense) in the above-entitled case:

Now, therefore, by virtue of the power vested in said naval court martial by article 42 of the Articles for the Government of the Navy (34 U. S. Code 1200, art. 42), of which court martial I, the undersigned, am president, you are hereby commanded and empowered to apprehend and attach the said J——— B. S———, wherever he may be found within the State of California, and forthwith bring him before the said general court martial assembled on board the U. S. S. *Colorado* at San Francisco, California, to testify as required by said subpoena.

Dated U. S. S. *Colorado*, San Francisco, California, November 7, 19—.

A——— B. C———,

Captain, U. S. Navy,

President of said General Court Martial.

(6) Note that a certified copy of the order convening the court and of the subpoena must be attached to this voucher. Use, or copy, S and A Form 99—Revised (Public Voucher for fees and mileage of witnesses and for the giving of depositions).

(7) The rates of compensation herein specified are subject to change from time to time and the paymaster who is to furnish the funds should be consulted as to his latest instructions relating thereto.

FORMS

F-21. Voucher for reimbursement of traveling expenses, civilian witness in Government employ.—

The United States, Navy Department, to _____, Dr.
(Address) _____

	Dollars	Cents
For reimbursement of traveling expenses incurred in attendance as a witness before the _____ court-martial at _____, from _____, 19____, to _____, 19____, in accordance with the subpoena which is attached hereto and forms a part of this account—as per itemized statement herein set forth.		
Amount claimed.....		

I solemnly swear that the above account and schedule annexed are just and true in all respects, as verified by a memorandum kept by me; that the distances as charged have been actually and necessarily traveled on the dates therein specified; that the amounts as charged have been actually paid by me

APPENDIX F

for traveling expenses; that I have not and will not receive, directly or indirectly, from any person, agency, or corporation any sums as rebate on account of any expenses of transportation included in this account; that none of such distances for which charge is made was traveled under any free pass on any conveyance; that no part of the account has been paid by the United States, but the full amount is justly due; that all expenditures included in said account other than my own personal traveling expenses were made under urgent and unforeseen public necessity, and that it was not, for the reasons stated herein, feasible to have payment made for such expenditures by a pay officer of the Navy Department. So help me God.

Sworn to and subscribed before me at _____, on this _____ day of _____, 19—.

_____,
_____, U. S.
(Judge advocate, or proper officer.)

I certify that _____, a civilian in Government employ, has been in attendance as a witness before the _____ court-martial, of which I am _____, in session at _____, from _____, 19—, to _____, 19—, inclusive, and that he was duly summoned thereto from _____, and that he was not furnished transportation by the Government for this journey.

_____,
_____, U. S.
(Judge advocate, or proper officer.)

To _____,

Supply Corps, U. S. Navy:

You are hereby directed to pay the cost of travel and expenses, for civilian witness whose account is set forth above, in the sum of _____ dollars (\$—.—).

_____,
_____, U. S. Navy, Commanding.
Paid by check no. _____, dated _____, 19—, in favor of principal.

_____,
_____, Supply Corps, U. S. N.
(Receipt to be signed only when payment is made in cash.)

Received _____, 19—, of _____, _____, Supply Corps, U. S. N., in cash, _____ dollars, in full of above account.

_____,
Witness.

(Certified copy of order convening the court and the subpoena must be attached to this voucher.)

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Itemized statement of traveling expenses and other expenses incurred under stress of urgent or unforeseen public necessity

(Fill in form on this voucher showing how transportation requests were used)

Date	Character of expenditures	Sub-voucher no.	Amount	
			Dollars	Cents
19—				
	Total account claimed.....			

Memorandum of travel performed upon transportation requests

No. of transportation request	Date of travel	From—	To—	Via R. R.	Dollars	Cents

F-22. Letter informing convening authority that court has finished all business before it.—

U. S. S. COLORADO,
SAN PEDRO, CALIF.,
November 22, 19—.

From: Captain A—— B. C——, U. S. Navy, president, general court martial.

To: Commander Battleships, Battle Force, U. S. Fleet.

Subject: Adjournment of court after completion of all business before it.

1. The general court martial of which I am president, having finished all the business before it, has adjourned to await your further instructions.

A—— B. C——.

F-23 Order dissolving court.—

UNITED STATES FLEET
BATTLESHIPS, BATTLE FORCE
U. S. S. WEST VIRGINIA, FLAGSHIP

SAN PEDRO, CALIF.,
November 24, 19—.

From: Commander Battleships, Battle Force, U. S. Fleet.

To: Captain A—— B. C——, U. S. Navy, president, general court martial,
U. S. S. Colorado.

Subject: Dissolving general court martial.

1. The general court martial of which you are president is hereby dissolved.

2. You will notify the other members of the court and the judge advocate accordingly and will return the original precept to the convening authority.

I—— H. G——.

APPENDIX F

F-24. Letter directing an officer to appoint a supervisory naval examining board.—

UNITED STATES FLEET
BATTLESHIPS, BATTLE FORCE
U. S. S. WEST VIRGINIA, FLAGSHIP

SAN PEDRO, CALIF.,
May 12, 19—.

From: Commander Battleships, Battle Force.

To: Commanding Officer, U. S. S. *Tennessee*.

Subject: Supervisory board for the examination, preliminary to promotion, of such officers as may be ordered to report for such examination.

1. You are directed to appoint a board, consisting of three officers, to supervise the written professional examination, preliminary to promotion, of such officers as may be ordered to report for such examination. The board will ask the candidates if they have any objection to the naval examining board convened on board the U. S. S. *New Mexico*, which will be ordered to conduct their professional examination and to make a final recommendation in their cases to the department; and if they have no objection, they will be permitted to waive their right to appear in person before said board, as conferred by section 277, title 34, U. S. Code, said waivers to be sworn to and to be attached to the examination papers of the candidate, and to be in accordance with the form prescribed by Naval Courts and Boards.

2. Upon the completion of the examination a certificate signed by each member of the board will be attached to the papers in each case, stating whether or not the candidate has any objection to his examination for promotion being conducted by the naval examining board convened on board the U. S. S. *New Mexico*, and that he received no outside assistance during its progress. The board will forward the papers by registered mail in a sealed envelope, marked "Confidential", to the "President, Naval Examining Board, U. S. S. *New Mexico*, San Francisco, California."

3. You will direct these officers, if they waive their right to appear in person before the naval examining board as outlined above, to report to the supervisory board for professional examination, preliminary to promotion, and in any event you will direct them to report to the board of medical examiners for physical examination, preliminary to promotion.

4. The supervisory board will remain in force until further orders, and if any member of that board is relieved or detached, you are hereby authorized to appoint new members to take the places left vacant.

5. The procedure of the board shall be in accordance with Naval Courts and Boards.

I——— H. G———

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F-25. Libel for a case of marine collision (8).—

To the honorable the Judges of the United States District Court for the Southern District of New York:

The libel of the United States of America against the steamship *Miranda*, her engines, boilers, etc., in a cause of collision, civil and maritime, alleges as follows:

First. At all times hereinafter mentioned libellant was the owner and in possession of the United States ship *Constitution*, a vessel of the Navy of the libellant.

Second. The *Miranda* is a steel, twin-screw steamer, 10,678 tons gross, 8,115 tons net tonnage, 499 feet 6 inches long, 68 feet 3 inches beam, and is now, or will be during the pendency of process hereunder, within the jurisdiction of this court.

Third. At about 3:30 a. m., on June 2, 19—, the United States ship *Constitution* was in the Atlantic Ocean pursuing a course approximately 356 degrees true, at a speed of approximately 15 knots, en route from Hampton Roads to New York. The night was clear, although there was no moon. Lieutenant A—— B. C——, U. S. Navy, was on watch as officer of the deck, all proper navigational lights were burning brightly, and a sharp lookout was being kept. At about 3:30 a. m., the green light and two masthead lights of a steamer were observed about one point on the *Constitution's* port bow at a distance of approximately ten miles. The *Constitution* held her course and speed. At about 3:45 a. m., the steamship carrying the green light and the two white lights crossed the bow of the *Constitution* at a distance of about five miles, and continuing on her course presented her green light to the green light of the *Constitution*. The two vessels were thus proceeding in opposite directions, their lights being starboard to starboard. At about 3:55 a. m., the green light of the other steamer was about two points forward of the *Constitution's* starboard beam at a distance of about one-quarter of a mile. Without any warning whatsoever the other steamer swung sharply and suddenly to her starboard and presented both her red and green lights to the *Constitution*. Seeing that a collision would be inevitable if the *Constitution* held her course, the rudder of the *Constitution* was put hard left, which caused the *Constitution* to swing to port in a direction away from the approaching vessel. Up to this time the *Constitution* had been proceeding at standard speed of 15 knots, but at the instant the rudder was put hard left, full speed was signaled the engine room which resulted in increasing the speed immediately to about 17 knots, and the *Constitution* continued to go at this speed in order to get away from the approaching vessel. This maneuver on the part of the *Constitution* enabled

(8) The libel given herein would be good in a court of the United States. It is given as a guide, but should not be relied on in a libel proceeding in a foreign court. In all such cases the local rules should be consulted. A commanding officer finding it advisable to institute libel proceedings should consult the United States consul and a competent proctor of the port in regard thereto.

Rule 23 of the U. S. Admiralty Rules provides for amendments in matters of form at any time on motion to the court, as of course; and that new counts may be filed, and amendments in matters of substance may be made, on motion, at any time before the final decree, on such terms as the court shall impose.

As admiralty practice is liberal throughout the world, it is believed that rules similar to rule 23 above are observed by the courts of nearly all countries. Consequently, even though the libel shown here may not be in accord with the form prescribed by a foreign court, amendment will probably be allowed, and thus a libel in the form here given may be used in case of necessity.

her to avoid the approaching steamer, which steamer passed immediately astern of the *Constitution*, passing from the *Constitution's* starboard to her port side. While the steamer was approaching, she blew several confused and unintelligible blasts on her whistle. During all this time the approaching steamer appeared to be proceeding at full speed, and as she passed astern of the *Constitution*, the captain of the *Constitution* shouted to the steamer to stop her engines. Seeing that the two vessels had cleared, the rudder of the *Constitution* was put hard right to stop the port swing of the *Constitution* to prevent her ramming the other steamer. The steamer which had crossed the stern continued to swing sharply to her starboard, and turning on this starboard swing struck the port side of the *Constitution* at a point about twenty-six feet from the *Constitution's* stern.

After the collision the captain of the *Constitution* ascertained that the name of the vessel which had collided with him was the *Miranda*, and he then offered to render any assistance possible to this vessel. The *Miranda* replied that she did not need any assistance, and continued on her course.

Fourth. Nothing that the *Constitution* did or omitted to do in any way caused or contributed to the said collision, but it was solely due to the negligence of the *Miranda* and of those navigating her in the following respects, among others, which will be shown at the trial of this cause :

1. She was not in charge of careful and competent persons.
2. She did not keep a good lookout.
3. She was not navigated and maneuvered in a careful manner.
4. She did not take proper precautions to avoid the collision.
5. Her steering gear and steering engine were not in good and proper working order.
6. She violated the rules of the road at sea.
7. She was unseaworthy (9).

Libelant reserves the right to amend this article of the libel in order to set out with greater particularity the negligence of the *Miranda*.

Fifth. As a result of the collision aforesaid, the *Constitution* was seriously damaged and will require repairs which will consume much time. As a consequence, libelant sustained damage in the cost of such repairs, in the detention of said ship and loss of her services while undergoing said repairs, and in the loss of property and incidental damages and expenses, in the sum of one hundred thousand dollars (\$100,000.00), as libelant now estimates.

When said damage is made certain as to items and amounts thereof, libelant reserves the right to amend this article so as to set forth said figures with precision and in detail.

Sixth. All and singular the premises are true and within the admiralty and maritime jurisdiction of this honorable court.

Wherefore, the premises considered, libelant prays that process may duly issue citing all persons having any interest in the *Miranda* to appear and answer on oath this libel, and that said steamship *Miranda*, her engines, etc., may be condemned and sold to pay libelant's claim with interest and costs,

(9) Every probable contributing cause, whether accurately known or not, should be alleged, as it is preferable to amend by deletion rather than by addition.

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and that libelant may have such other and further relief in the premises as may be just.

_____,
Proctor for Libelant.

SOUTHERN DISTRICT OF NEW YORK, }
City and county of New York, } ss:

J—— L. S——, being duly sworn says:

I am the captain of the United States ship *Constitution*, and was such at the time of the collision described in the foregoing libel. I have read said libel and the same is true and correct to the best of my knowledge, information, and belief.

J—— L. S——

Sworn to and subscribed before me this 3d day of June 19—.

[SEAL]

N—— O. P——,
Notary Public.

New York Co. no. —. Register's no. —.

Term expires March 30, 19—.



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App. B-76	151	App. D-5	15	App. E-13	None
App. C-1	41	App. D-6	16	App. F-1	Chap. 23 (n. 1)
App. C-2	42	App. D-7	17	App. F-2	1381
App. C-3	43	App. D-8	18	App. F-3	1382
App. C-4	44	App. D-9	19	App. F-4	1383
App. C-5	45	App. D-10	20	App. F-5	1384
App. C-6	46	App. D-11	21	App. F-6	1385
App. C-7	47	App. D-12	22	App. F-7	1386
App. C-8	48	App. D-13	23	App. F-8	804
App. C-9	49	App. D-14	24	App. F-9	1389
App. C-10	50	App. D-15	25	App. F-10	1390
App. C-11	51	App. D-16	26	App. F-11	1391
App. C-12	52	App. D-17	27	App. F-12	1392
App. C-13	53	App. D-18	28	App. F-13	1393
App. C-14	54	App. D-19	29	App. F-14	1394
App. C-15	55	App. D-20	30	App. F-15	1395
App. C-16	None	App. D-21	31	App. F-16	1396
App. C-17	56	App. E-1	409, 630	App. F-17	1397
App. C-18	57	App. E-2	None	App. F-18	1398
App. C-19	58	App. E-3	630	App. F-19	1399
App. C-20	59	App. E-4	823 (n. 44),	App. F-20	1400
App. C-21	60		825 (n. 54)	App. F-21	1401
App. C-22	61	App. E-5	932 (n. 20)	App. F-22	1402
App. C-23	62	App. E-6	978 (n. 10)	App. F-23	1403
App. C-24	63	App. E-7	1082 (n. 41)	App. F-24	1404
App. C-25	64	App. E-8	1158 (n. 28)	App. F-25	1405

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